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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

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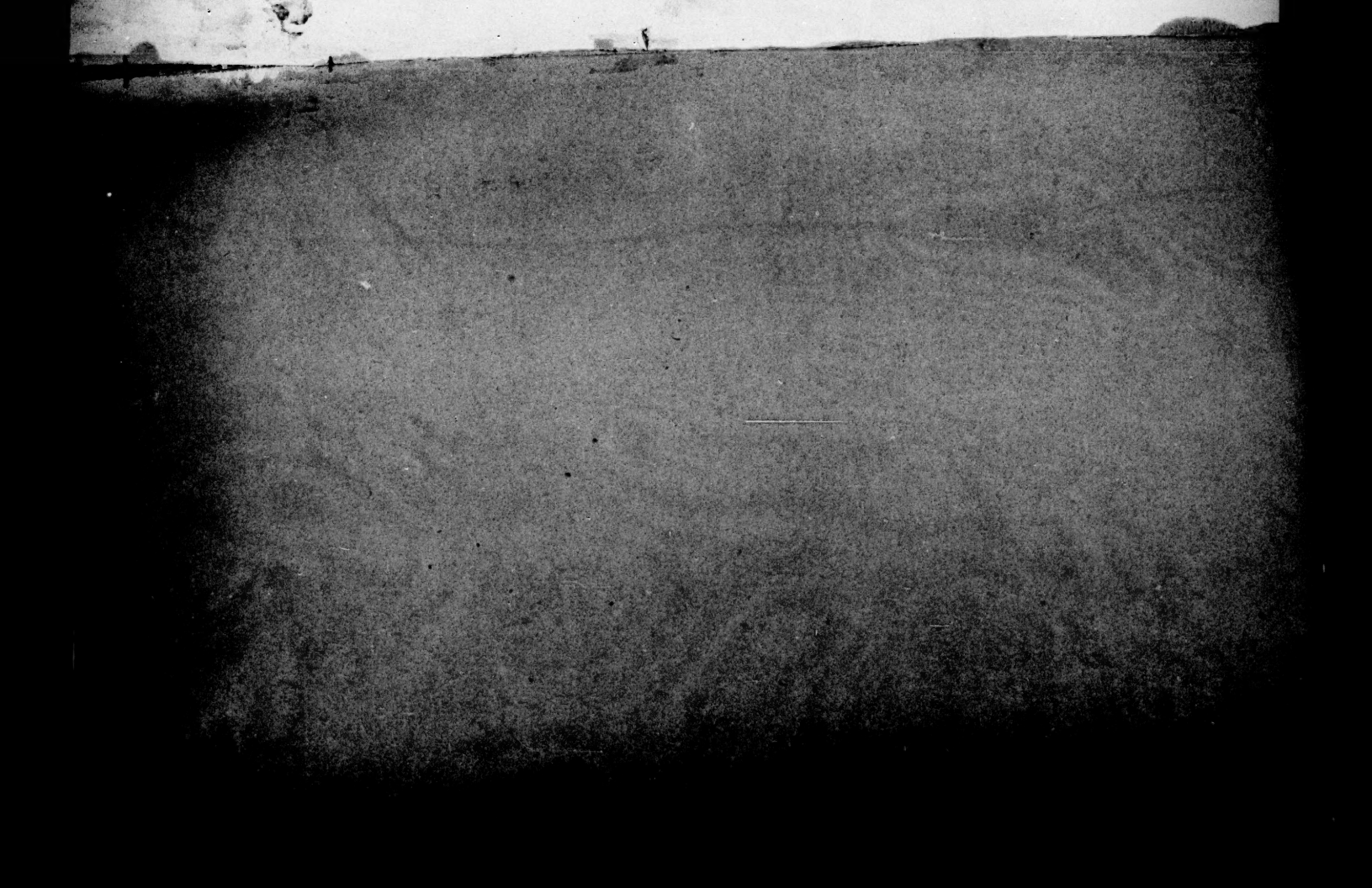
GEORGE PLACE AND CHARLES PLACE, AND CHARLES D. BIGELOW, SURVIVOR OF BIGELOW AND TRASK, WILLIAM A. WRIGHT ET AL., CLAIMANTS OF THE SCHOONER "GENERAL S. VAN VLIET" AND DAN SMITH ET AL., CLAIMANTS OF THE CARGO, APPELLANTS,

vs.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 9, 1882.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 328.

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1 *Bill of Exceptions. Filed July* 3, 1882.

Circuit Court of the United States, Eastern District of New York, in the Second Circuit.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

The above-entitled cause came on for trial before the Honorable William Strong, Justice of the Supreme Court of the United States, temporarily assigned to hold the circuit court of the United States in and for the eastern district of New York, in the second circuit, on the 24th day of June, in the year of our Lord one thousand eight hundred and seventy-nine, on the appeal of George and Charles Place, Charles D. Bigelow, survivor of Bigelow and George L. Trask, William A. Wright, Samuel Hemmenway, William Betsworth, William M. Robinson, Albert V. Eldredge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, owners of the schooner General S. Van Vleet; also Dan. Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, owners of the cargo
2 laden on board said schooner General S. Van Vliet, from the final decree of the district court of the United States for the eastern district of New York in the said cause, entered on the 4th day of January, 1879, and from each and every of the various orders and proceedings herein. The counsel for the Norwich and New York Transportation Company, respondent, read the petition of the said respondent; the order entered thereon, bearing date the 19th day of July, 1872; the order entered in the said cause, bearing date the 5th day of March, 1873, directing an appraisement of the value of the interest of the said petitioners as owners in the steamboat City of Norwich; the order substituting a commissioner in place of the original commissioner, deceased, dated the 4th of February, 1874; the report of the said commissioner, dated the 6th of January, 1875; the order entered in said cause, dated the 29th of March, 1876, overruling exceptions to the said report, and confirming the same; the monition issued in the said cause, dated the 28th of December, 1876, with the return thereto; the order in the said cause, dated 5th April, 1877, referring it to the commissioner to take proof of the claims of parties who had appeared, with the order dated the 29th of December, 1877, amending the said order; the report of the commissioner, bearing date the 13th day of February, 1878; the exceptions of the petitioners to said report, filed the 19th of February, 1878; the order dated the 27th of September, 1878,
3 overruling said exceptions; the order dated the 16th day of January, 1879, amending the final decree *nunc pro tunc;* the final decree in the said cause, dated the 4th day of January, 1879, and the proceedings and evidence taken before the commissioner under the order of March 5th, 1873, upon the appraisement of the steamboat "City of Norwich." The counsel for the appellants read the objections of the appellants to the proceedings before the commissioner on the appraisement of values, the exceptions of the said appellants to the report of the commissioner on the appraisement of

the said steamboat "City of Norwich," and the several notices of appeal and appeals of the said appellants from the final decree entered herein; all as they appear in the copy of the record on said appeal hereto annexed, marked "I." The counsel for the appellants offered in evidence an exemplified copy of the judgment record in an action in the circuit court of the United States for the district of Connecticut, in which The Norwich and New York Transportation Company was plaintiff and The Western Massachusetts Insurance Company was defendant; from which record the following facts appeared: That said action was brought in the circuit court of the United States for the district of Connecticut to recover on a fire policy on the steamer "City of Norwich;" that one of the defences was that
4 the loss and damage were occasioned by the collision (which is the same mentioned in these proceedings), while the plaintiff, who is the petitioner here, claimed that the loss was by fire.

That the court held that there were two classes of losses: one the damage done the steamer by the collision itself, and the other the damage caused by the fire which followed the collision; and gave judgment for the plaintiff for the damage caused by the fire.

That the damages caused by the collision were proved at fifteen thousand dollars.

That the damages caused by the fire were determined to be sixty-nine thousand dollars.

That the defendant, the Insurance Company, moved the court for a new trial, but the motion for a new trial was denied.

The counsel for the appellants offered in evidence a copy of the record of a cause in the Supreme Court of the United States, of December term of 1871, in which The Norwich and New York Transportation Company was appellant and William A. Wright and others were respondents, the decision whereof is reported in the 13th volume of Wallace's Reports at page 104, &c.; from which record it appeared that proceedings *in rem* against the steamboat "City of Norwich" had been commenced in the district court of the United States for the eastern district of New York to recover for dam-
5 ages arising out of the collision mentioned in these proceedings; that said steamboat had been there seized by the marshal and a stipulation given for her value by the petitioner herein; which stipulation is the one hereinafter mentioned as having been given on the 29th day of March, 1867, and is, or includes, the fund referred to in the opinion of Mr. Justice Bradley in that case, reported in 13 Wallace, p. 125.

The counsel for the appellants further offered a certified copy of the bill of costs taxed in favor of the proctor for the petitioner in the district court, a copy whereof is hereto annexed, marked "A;" a certified copy of the amended libel in a cause in the district court of the United States for the Eastern district of New York, entitled George Place and Charles Place against The Steamboat "City of Norwich," a copy whereof is hereto annexed, marked "B;" a certified copy of the answer of the Norwich and New York Transportation Company, claimants in the said cause, a copy whereof is hereto annexed, marked "C;" a certified copy of the petition of the Norwich and

Transportation Company in the last mentioned cause, verified the 2nd day of October, 1866, praying, among other things, to be declared entitled to the benefit of the act entitled "An act to limit the liability of ship owners and for other purposes," and for an appraisement of the said vessel, the "City of Norwich," and an order of reference entered on the 26th day of January, 1877, copies
6 whereof are hereto annexed, marked "D" and "E;" a certified copy of the report of the said commissioner upon such appraisement, dated March 11th, 1867, a copy whereof is hereto annexed, marked "F;" a certified copy of the stipulation for value, filed March 29th, 1867, in the above mentioned cause, pursuant to the report of the said commissioner, and a certified copy of the interlocutory decree and order of reference in the said last mentioned cause, copies whereof are hereto annexed, marked "G" and "H." And thereupon, and on the 13 day of October, 1879, the said justice made and filed findings of fact and conclusions of law as follows:

In the matter of the petition of the Norwich and New York Transportation Company for the benefit of limitation of liability, provided for in the third and fourth sections of the act of Congress of March 3rd, 1851, entitled "An act to limit the liability of ship owners and for other purposes," &c.

Appeal from the Eastern District of New York.

STRONG, J.:

I find the facts of this case to be as follows:

7 1. On the morning of the 18th of April, 1866, a collision took place between the steamboat "City of Norwich," then owned by the petitioners, and the schooner "General S. Van Vliet," then owned by William A. Wright *et al.* It occurred on Long Island Sound, nearly opposite Huntington, and it was caused by the negligence of the steamboat's officers or hands, without any design, neglect, privity, or knowledge of her owners. Very soon, within half an hour after the collision, the boat took fire, her deck and upper works were burned off, and she sank in about twenty fathoms of water. The fire was a direct consequence of the collision and inseparable from it. It was caused by the rushing of the waters through the broken hull of the boat, whereby the fire was driven out of the furnaces upon the wood-work, and the boat sank by reason of her filling with water.

2. At the time of the disaster the boat had a cargo of merchandise on board belonging to different freighters, all of which was totally lost. The freight then pending amounted to $600, but none of it was earned or received by the ship owners.

3. Some time after the steamboat was sunk, and her cargo destroyed as aforesaid, she was raised by salvors and taken to the Long Island shore, within the port of New York, where she was repaired.

4. On the 9th day of May, 1866, William A. Wright *et al.*,
8 the owners of the schooner, filed in the district court for the district of Connecticut a libel against the petitioners, in Nor-

wich and Transportation Company, the owners of the steamboat, to recover damages *in personam* for the loss of the schooner and her cargo, caused by the collision. To this libel an answer was put in denying any fault of the steamboat, and the respondents also preferred a claim to the benefits of the act of Congress limiting the liability of ship owners. On the 23rd of April, 1867, a final decree was made by the court in favor of these libellants, adjudging to them and to the owners of the schooner's cargo the sum of $26,657.28. From this decree an appeal was taken to the circuit court, where it was affirmed; and it was subsequently affirmed by the Supreme Court of the United States. The affirmance by the latter court was at its December term, 1871, and it is reported in the 13th volume of Wallace's Reports, at page 104, &c. That from the record in that case it appeared that proceedings *in rem* against the steamboat "City of Norwich" had been commenced in the district court of the eastern district of New York to recover for damages arising out of the collision mentioned in these proceedings.

5. On the 23rd of August, 1866, while the suit in the district court of Connecticut was pending, and after the steamboat had been raised, repaired, and brought into the port of New York,
9 George and Charles Place, two of the appellants, filed their libel *in rem* against her in the eastern district of New York claiming as owners of part of her cargo. Such proceedings were the proceedings referred to in the previous finding. Other libels *in rem* were also filed at the suit of other owners of cargo. In due couse the steamboat was seized by the marshal, and the petitioners having intervened as claimants, an appraisement was ordered, and a stipulation for the appraised value in the sum of $70,000 having been given, the steamboat was released to them. The stipulation purported to be for the security not only of the Messrs. Place, but also for the benefit of all persons who might, by due proceedings in said court, show themselves entitled to liens upon the vessel by reason of the said collision. The appraisement was of the value of the vessel as it was after she had been raised and repaired. It was returned into the court on the 11th of March, 1867, and the stipulation in the amount of the appraisement was filed on the 29th day of the same month. On the 20th day of December, 1869, the district court ordered decrees to be entered in favor of the libellants in all the suits commenced against the steamer as aforesaid.

6. Such was the condition of the litigation when the present petition was filed in July, 1872, after the rendition of the judgment by the supreme court in the case of the libel of William A.
10 Wright *et al.* in the district court of Connecticut. The petition prayed that, in conformity with the act of Congress, the decision of the Supreme Court, and the admiralty rules made in pursuance thereof, the court would cause an appraisement to be made of the value of the interest of the petitioners in the steamboat, and her freight for the voyage in which she was employed, for which they were liable, and that an order should be made for paying the amount of such valuation into court, or for giving a stipulation

therefor, with sureties. It prayed further for a monition against all persons claiming damages arising out of the said collision and fire, citing them to appear and make proof of their claims, and it prayed also for a restraining order against the further prosecution of all or any suits against the steamboat or the petitioners for any damage caused by the collision, fire, and loss. There was also a prayer for general relief. The monition was issued, the appellants appeared, and an order was made for an appraisement of the amount of value of the interest of the petitioners as owners, respectively, of said steamboat and her freight, pending for the voyage upon which she was employed, for which the petitioners were liable. A restraining order, as prayed for, was also made. Pursuant to the direction of the court, an appraisement was made. The appraiser ascertained and reported the value of the steamboat, as she lay imme-
11 diately after the collision and fire, and before she was raised, to have been $2,500, and the district court confirmed the report and ordered the amount to be paid into the registry, which was accordingly done.

7. The value of the interest of the petitioners in the steamboat, as she was immediately after the disaster, was $2,500 and no more.

8. The value of that interest immediately before the collision was $70,000.

9. When the collision occurred the steamboat was insured against fire (not against marine disaster), and upon the several policies the petitioners, as owners, have recovered from the underwriters the sum of $49,283.07; that part of said sum was recovered by the petitioner herein in an action brought by it in the circuit court of the United States for the district of Connecticut on one of said five policies against the Western Massachusetts Insurance Company. One of the defences in that action was that the loss and damages were occasioned by the collision (which is the same mentioned in these proceedings), while the petitioner herein claimed that the greater part of the loss was by fire. The court held in that case that there were two classes of losses: one, the damage done the steamer by the collision itself, and the other caused by the fire.
12 The damages caused by the collision were proved at $15,000. The damages caused by the fire were determined to be $69,000. The said insurance company moved for a new trial, but the motion was denied.

10. The steamboat itself has never been surrendered or transferred to a trustee for the persons injured by her fault.

W. STRONG, *J.*

Conclusions of Law.

STRONG, J.:

In the Norwich and New York Transportation Company *vs.* Wright *et al.*, 13 Wall., 104, a case in which these petitioners and some of the appellants were parties, the act of Congress of March 3rd, 1851, entitled "An act to limit the liability of shipowners, and for other purposes," was under consideration. Some things were

then determined which I am not at liberty to disregard. Among them were the following:

1. The act adopts the rule of the general maritime law as measuring the liability of ship owners for faults of the masters, by which others are injured, and not the rule of the English statutes relating to the same subject.

2. The rule is applicable to the claims of all persons injured by a a collision as well as to claims by freighters of cargo on the offending vessel.

13 3. The present petitioners are entitled to the protection of the act against the owners of the colliding schooner.

4. They are not debarred by any laches of theirs.

5. The district court, sitting as a court of admiralty, has jurisdiction to administer the law.

In that case also the proper mode of proceeding for obtaining the benefit of the act was appointed out, and the course directed has been substantially followed in the present case. An appraisement of the steamboat has been made under the direction of the district court, and an apportionment has been ordered. The important question now, the question raised by these appeals, is whether the sum to be apportioned has been correctly ascertained, and whether it is all that for which the petitioners, who are the owners of the steamboat, are liable.

The limit of liability prescribed by the act of Congress is that "it shall in no case exceed the amount or value of the interest of the owner or owners in the offending ship or vessel and her freight then pending." This presents the question, At what point of time is the value of the owner's interest to be taken? Is the measure of the owner's liability or its maximum the value of the ship and her freight before the injury was done, or the value at some time subse-

14 quent to the injury, when proceedings may be instituted to ascertain its amount, or is it the value immediately after the fault has been committed (as, for example, in a case of collision), immediately following the destruction caused by it?

Very clearly it is not the former. The English statutes restricting the liability of ship owners do not adopt the measure recognized by the general maritime law. They measure the extent to which the owners of an offending vessel are liable by the value of that vessel immediately before the collision, adding the freight due, or to grow due, for and during the voyage, and they make no provision for the abandonment or surrender of the vessel.

Such has been the construction given to them, first by the courts of common law and chancery, and followed by the courts of admiralty. Brown *vs.* Wilkinson, 15 M. and W., 391; Wilson *vs.* Dickson, 2 Barn and Ald., 2; Dobres *vs.* Schroeder, 6 Sim., 281; and the Mary Caroline, 3 Wm. Rob., 101. The English courts have founded their judgments upon the statutes. They do not attempt to assert that such is the rule of the maritime law of the continent. Indeed, in England the general maritime law has never been adopted in all its breadth.

But it is the rule of that law which is to be applied to this case.

Even if it were not the rule in this country, without the aid of any statutes (upon which I express no opinion), it is the rule
15 which Congress has adopted and prescribed. By the maritime law all that the sufferers by the misconduct of an offending vessel are entitled to is the vessel itself after the injury has been committed, together with her freight. The liability of the owners is discharged by the surrender of the vessel and freight. Their loss, therefore, cannot exceed the value of the thing surrendered. What it may have been worth before the injury was committed is immaterial. Now, it is this measure of liability, recognized by the general maritime law, which the act of Congress has adopted, instead of the English measure. It follows, necessarily, that the steamboat owners are not liable to the extent of the value of the vessel immediately before the collision. And such I understand to have been the decision in the case to which I have referred, reported in 13 Wallace.

The appellants contend, however, that, conceding the value of the vessel is to be estimated, as it was, after the collision, the measure of the owners' liability is not the value immediately after the collision, but the value at a subsequent time, when the vessel, or its equivalent value, shall be delivered into court by the owners for the purpose of apportionment among the sufferers by its fault, or when the vessel, or its value, being already in the custody of the court, the owners, or the persons injured by it, shall take the proper proceedings for an apportionment.

16 The collision occurred on the 18th of April, 1866. After the steamboat was raised and brought into the port of New York, she was libeled and seized at the suit of sundry owners of her cargo. Having been claimed by her owners, an appraisement was ordered by the district court, and she was valued at $70,000, and released to her owners on their stipulation for that sum. This was in March, 1867, nearly a year after the collision. The appellants now insist that the sum ascertained to have been the value of the vessel at that time by that appraisement, and then stipulated for, is to be taken as the measure of the owners' liability, and apportioned accordingly. To this I cannot assent. It is true the present proceedings for an apportionment was not commenced until a later day; not, indeed, until the Supreme Court, by its decision and rules, had pointed out the course to be pursued to obtain the protection of the act of Congress. But the owners had claimed their right to the statutory limitation, alike in the libel *in personam* in the district of Connecticut and in the suits *in rem* in the eastern district of New York, though the right had not been accorded to them. But, independently of this, I am of opinion that the sum at which the steamboat was valued in March, 1867, is not the measure of her owners' liability in these proceedings for an apportionment. That appraisement was in proceedings that had no relation to the ques-
17 tion what is the extent of the owner's liability? Its purpose was to determine the value of the vessel at the time when she was appraised. It would have been unnecessary if the owners had surrendered her, and the stipulation for her appraised value was to

enable them to recover possession of her. It was taken under the general powers and usage of admiralty courts, and not under the act of Congress or the rules of the Supreme Court. Besides, the appraisement was one made of the value of the vessel after she had been raised at an expense of $22,500 and repaired at the cost of many thousand dollars more. It did not purport to be an estimate of her value at the time of the collision or immediately after. To hold that the owners are liable to the extent of that valuation would be substantially to require them to surrender not only the ship and her freight, but also a sum of money equal to all they expended upon her in raising and repairs. Such, I think, would be a departure from the obvious meaning of the statute and not required by the maritime law.

Under that law, in cases of maritime abandonment, a seizure or a judicial sale of the ship, if procured adversely to the owner, but without resistance by him, had no effect in determining the limit of his liability or deprived him of his right to abandon, though
18 the ship or its proceeds were thus brought within the jurisdiction of the court.

Pouget, Droit, Mar., vol. 2, p. 412; Trib. of Commerce, Marseilles, 1828; do., Aix, 1825.

The stipulation for value given in March, 1867, cannot be said to estop the owners from showing what was the value of the vessel immediately after the collision. Nothing in it warrants such a construction.

I cannot doubt that the measure of liability recognized by the maritime law and by the act of Congress is the value of the offending ship in the condition in which she was immediately after the disaster, adding the freight. Then the claims of the persons injured arose, the claims which the statute limits. The extent of the limitation is not a shifting one, varying with the times when the protection of the act may be sought, any more than it can be enlarged or diminished by the choice of the mode of obtaining that protection. Certain it is that if, immediately after the collision, the steamboat owners had surrendered the vessel and freight or transferred them to a trustee, they would have been discharged. Her value and her freight, then pending, were, then, all that they were liable for. That was then the extent of their loss. I cannot see how their liability can be increased by anything that may have occurred thereafter. It is the vessel as she then was that could have been transferred in satis-
19 faction of all claims, if the owners had elected that mode of obtaining their discharge. And it is the value as it then was which is the equivalent of the vessel that might then have been paid in pursuance of an apportionment made by the court. Had the vessel proceeded on her voyage after the collision, and had she met with a second disaster, occasioned by the fault of the master, by which her value had been greatly reduced, could she then have been surrendered or transferred in full satisfaction of the claims against her or her owners arising out of her first fault? Would her value,

after the second disaster, have been the measure of the owners' liability? I cannot think such a position can be maintained. Surely such is not the spirit of the statute. And, if not, it seems equally plain that the liability of the owners is not enlarged by the fact that after the collision the boat has been raised and repaired by them at large expense. In other words, has increased in value. It may, perhaps, be conceded that if, after the vessel was raised and repaired, the owners had sought the protection of the statutory limitation by transferring her to a trustee the creditors would have been entitled to her as she then was, in her improved condition. This, not because her value then was the value for which they were, at all events, responsible, but by force of the transfer. But they have made
20 no such transfer. They never offered to make one. They elected the other course of proceeding allowed to them by the law. They retained the vessel, and asked the court for an apportionment of the amount for which they were liable. To hold them now to the value of the vessel, when she had been repaired, would practically deny to them the advantage of that election which the statute accords to them.

It is to be observed that the act of Congress not only adopts the maritime rule, or measure of limitation, but it prescribes two modes, in either of which the ship-owners may secure the benefits of the rule.

The measure of liability and the modes allowed for obtaining the limitation are not to be confounded. One of the modes is the transfer, by the owners of the vessel in fault, with her pending freight, to a trustee, for those who may be legally entitled thereto. This is substantially the course pursued under the maritime laws. The other is an apportionment, by the proper court, on their petition, of the sum for which they are liable, among the parties entitled thereto, when the whole value of the vessel and her freight for the voyage is not sufficient to make compensation to each of them. In other words, the liability of the owners is discharged either by transferring the vessel and freight or by paying their equivalent,
21 that is, the value of what they might have transferred in discharge, according to the apportionment of the court. The owners have their option of these two modes. They may give up the vessel and freight or they may retain them and pay their value. But the measure, or limit of liability in each case is the same. Very plainly it is not intended that the creditors shall obtain more when one mode of proceeding is adopted than when the other is followed. But, as I have said, all that the owners are required to transfer is the ship in her damaged condition, as she was immediately after the injury was inflicted. Equivalent to that is her value at that time.

Opinion.

STRONG, J.:

I am, therefore, of opinion that the district court was correct in determining that the value of the steamboat immediately after the collision and fire, as she then was lying at the bottom of the sound together with her pending freight, is the extreme measure of the owners'

liability, and is the amount to be apportioned. That value has been ascertained to have been $2,500, and I see no reason to doubt the correctness of the appraisement. It is true that sum is the value of the vessel alone without anything added for freight, but no freight was earned, six hundred dollars was the amount pending at the time of the collision, but it was of no value. Had the owners selected the other mode of discharging their liability—that of surrendering or
22 transferring the vessel and freight to a trustee—the fact that there had been six hundred dollars of freight pending would have been of no importance. The value of the subject transferred would have been only that of the vessel—the same as that which the district court fixed for apportionment. The transfer of the freight would have been the transfer of a valueless thing. And, as I have said, the measure of liability is the same, whether the vessel and freight be transferred or whether their value be paid into court for apportionment. In neither case do the owners have more at risk than their sea venture. I think, therefore, the owners are not answerable to any extent for freight wholly lost, though it was pending at the time of the collision, for it had no value immediately after.

It was suggested, though not pressed, during the argument before me that even if the value of the steamboat in the condition in which she was directly after the collision, is the maximum of the owners' liability, the appraisement should have been made of her while in the interval between the collision and the fire. But if this were conceded, the result must have been the same. Plainly the vessel was worth no more then than she was after she had sunk. She was then a vessel inevitably doomed to partial destruction by fire and to immediate foundering. The fire was as much a
23 part of the original disaster as was the breaking of the hull by the impingement of the schooner; and so was the sinking. It is impossible to separate them. By the collision the hull of the steamboat was stoven; the water poured in, driving the fire out of the furnaces into contact with the woodwork, which was mostly destroyed before the hull had sufficiently filled to cause it to sink. Now, had the owners transferred to a trustee the boat at the instant after she came in contact with the schooner, and before the water had risen within her sufficiently to drive her fires out from the furnaces, confessedly they would have been discharged. But what would the trustee for the sufferers, the owners of the schooner, and the freighters have taken? Surely only a vessel in process of destruction by fire and destined to sink. She would then have been worth no more than she was at the bottom of the Sound, and that value the sufferers have now under the appraisement that was made. Besides, a transfer could not have been made before the fire, because no trustee could have been appointed by any court.

I come, then, to the more important question whether the proceeds of the fire insurance should have been added to the appraised value of the steamboat. At the time of the collision her owners held policies insuring her against fire, upon which they have recovered the sum of $49,283.07; and it is strenuously insisted
24 that the sum thus recovered should be added to the value of

the boat and brought into the apportionment. This presents, again, the question, what the limit of the liability of ship owners, defined by the maritime law, and adopted by the act of Congress. As I have said, the sum to be paid into court for apportionment is the equivalent of what would pass to the trustee by a transfer under the statute. In substance, then, the question is this: According to the rule of the maritime law or the act of Congress (which is the same) does the limit of the owners' liability extend beyond the vessel and her freight to the insurance which may be upon her at the time of the disaster? The language of the statute is: "It shall be deemed a sufficient compliance with the requirements of this act on the part of such owner or owners if he or they shall transfer his or their interest in such vessel and freight for the benefit of such claimant to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner or owners shall cease."

The subject to be surrendered is the interest of the owners in the vessel and freight. Not a word is said of transfer of insurance. A transfer of property insured is not "*ex proprio vigore*" a transfer of policies of insurance thereon. Generally, indeed, it avoids
25 the policies. As was said by Lord Chancellor King, in Lynch *vs.* Danzell, 4 Bro. P. Rep., 432: "Such insurance (those against fire) do not attach to the realty, or in any manner go with the same as incident thereto by any conveyance or assignment, but they are only special agreements with the persons insuring against such loss or damage as they may sustain." There is nothing in the act of Congress to indicate that the transfer of the interests of the owners to a trustee was intended to have any different effect from that of an ordinary transfer of personal property, which neither in law nor in equity carries with it insurance, on any collateral contract. It seems to me, therefore, that were I to hold that the owners are responsible not only to the extent of the value of the vessel and her freight, but also for the insurance collected, I should, in effect, interpolate in the statute words which Congress refrained from using, and extend the liability beyond the limits prescribed.

I do not feel the force of this suggestion, that because the statute declares that the liability of the owner "shall in no case exceed the amount or value of the interest of such owner in such vessel," and her freight then pending, instead of declaring that it shall not exceed the value of the vessel and freight something beyond the value of the vessel and freight, such as insurance, may have been intended:
First, because a policy of insurance is no interest in the thing
26 insured; and, secondly, because the words of the statute are plainly not designed to enlarge liability, but have for their purpose making provision for part owners of offending vessels. Instead of holding a part owner liable to the extent of the whole value of the vessel, they limit his liability to the value of his interest or share, leaving the other owners liable to the extent of the value of their shares. I cannot doubt such is the meaning of the statute.

There is nothing then in the act of Congress that extends the liability of the owners beyond that existing under the general maritime rule, and by that rule there seems to be no room for doubt that the liability does not extend to the surrender of insurance upon the abandoned vessel. Upon this subject the continental authorities are substantially in unison. Indeed, I have been able to find no one that asserts this rule is otherwise. Only one intimates an opinion to the contrary. I do not propose to quote these authorities at length. Copious reference was made to them by the learned judge of the district court, and I shall not repeat what he has said. His citations from Cammont, Dictionaire de droit Maritime, title, abandon maritime, Sect. 54 and 55, from the Code de Commerce and from Pouget, Droit Maritime, Vol. 2, 415, 419, are quite sufficient to show what the maritime measure of liability was,
and long had been, when our act of Congress was en-
27 acted, and to establish that it did not extend to insurance
upon the abandoned vessel. I may add a quotation from Boulay Paty, and one or two other sources. In his vol. 1, p. 297, Boulay Paty says: "The product of the insurance is the price of the premiums which the shipowner has paid to insure the ship. This premium is not bound as a security for the debts and obligations contracted by the captain. The law expressly binds only the ship and the freight to that. The code of commerce gives to shippers a lien only on ship and freight, consequently they have none on the insurance. In general, the ship is not unrepresented by the insurance, which, after the loss of the ship, becomes a right existing by itself, which gives a direct personal action in favor of the insured." All these principles, besides, agree with equity, and with the well understood interests of commerce. He says more to the same effect, and refers to Basin as sustaining him. So in De Villenenoc et Massé Dictionaire du Contentieux Commercial, word Amateur 18, it is said: "The surrender of the ship and freight does not extend to the insurance which the owner has put upon the ship." Other similar authorities might be cited. The subject has not been passed without
debate. In 1841 an effort was made in the Chamber of Peers
28 to amend the rule, so to make it require a surrender of the
insurance procured by the owner, besides the ship and freight, in order to exonerate the owners. The proposition was much debated, but it was voted down. (Bedarride du Com. Mar., vol 1, 359.)

It was then declared that by the Code of Commerce the shipowner is not required to bring in the insurance money when he makes the maritime abandonment. Now, it was in view of this rule, limiting liability and intending to adopt it, that the act of Congress of 1851 was enacted, as was held by the Supreme Court in the case reported in 13 Wallace. The purpose of the act was to extend to American shipowners the benefits which the general maritime law gave, viz., to limit their liability as it was limited by that law. I find nothing in the act to enlarge the measure of liability. In the case in 13 Wallace, the court was not called upon to consider or decide whether the proceeds of insurance must be transferred or accounted for in addition to the vessel and freight. The question was not

before the court, and it was not decided. Nor does Pardessus assert, as the doctrine of the maritime law, that insurance, as well as vessels and freight, must be abandoned to the freighters, certainly not in the latter editions of his work. At most, he says he had brought himself "to the belief that if the ship was insured the creditors to whom the surrender is made would have the right to demand
29 the amount of the insurance," for a reason which he gives, that appears to me to be quite unsatisfactory. But he does not claim that such a right has ever been acknowledged (Droit Commercial, Ed. 1841), and, as I have said, I find no continental authority that recognizes it. I am, therefore, of opinion that the petitioners in this case, who were the owners of the steamboat, are not bound to pay into the registry of the court the sum they received for insurance. I may add that, after reflection, I am unable to perceive that the proceeds of fire insurance are any more liable for the claims of the creditors than those of marine would be.

Of the remaining questions presented by these appeals not much need be said. The appellants urge that they should not be restrained from the further prosecution of their suits against the steamboat, or against the stipulators for value in those cases. They argue that in the proceedings *in rem* the personal liability of the petitioners is not involved, and that the act of Congress does not apply to such proceedings. The position thus taken cannot be sustained. It rests upon a very narrow view of the statute. A limitation of the liability of the owner of property is a limitation of resort to his property at the suit of his creditors. Let it be conceded that the freighters had a lien upon the vessel, yet when the liability of its owners is discharged the lien is gone. No liability can
30 rest upon the vessel which does not exist against the owner. (The Druid, 1; Wm. Robinson, 398–9.) It would be a strange anomaly, and one which would defeat the object of the act of Congress, if, after an owner of a vessel had taken all the steps required to release him from liability, his property, that is to say, his vessel, should still remain liable to the claim from which he had been discharged. Neither the statute, nor the 54th and 57th rules in admiralty justify such a conclusion. A suit *in rem* is, in a very proper sense, a suit against the owner of a thing even though he may be unknown, and may in fact have no knowledge of the suit, and especially is this true when, as in the present case, the owner appears in the suit and claims the thing attached.

I have only to add that the taxation of costs to which some of the appellants object, appears to me to have been correct. The decree of the district court will therefore be affirmed. It must be admitted that the appellants recover a very inadequate compensation for the injuries they have sustained. On the other hand, the injuries were inflicted "without any privity or knowledge" of the owners, by the fault of the master of the steamboat, who remains liable to the fullest extent; and the act of Congress, limiting the liability of the owners, together with the proceedings under
31 it, rests upon a public policy recognized throughout the commercial world, the policy of encouraging investments in ships

by limiting the liability of the owners for wrongs done by the master to the value of the sea venture.

The decree of the district court is affirmed, &c.

And thereupon the counsel for the appellants requested said justice to make the following additional findings of fact, all of which the said justice found as requested, viz:

1. After the steamer sank she was not discovered by the wreckers employed to raise her until on or about April 25th, 1866.

2. She was not brought to Greenpoint until about four months from the time the wreck was discovered.

3. Repairs were not begun until after the steamer was brought to Greenpoint, and were completed before the appraisement hereinafter referred to.

4. The libel of Place *et al.* was filed August 24th, 1866.

5. The steamer was attached under this libel before September 12, 1866.

6. Petition for leave to bond the steamer was filed October 19th, 1866.

32 7. Order for leave to bond and for appraisement of the steamer was entered January 26, 1867.

8. Commissioners' report on that appraisement was filed and confirmed March 27, 1867. (See Record, page 76, for this report.)

9. The said steamboat was bonded on the 29th March, 1867, by stipulation filed on that day. (See Record, page 71, for this stipulation.)

And thereafter, and upon notice of the filing of the said findings of fact and conclusions of law, and on the —— day of ———, 1881, being before the entry of any judgment or decree herein, the claimants, George and Charles Place, C. D. Bigelow, survivor, &c., William A. Wright, Samuel Hemmenway, William Betsworth, William M. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, Henry L. Slaight, Daniel Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, filed in the office of the clerk of said circuit court, and served upon the proctor for the petitioners, with notice of filing, the following exceptions, separately to the findings of fact and conclusions of law, made and filed by the said justice, as being unsustained by any proper or legal evidence, and being in opposition to the facts as proved by the testimony presented, and as contrary to law.

33 U. S. Circuit Court, Eastern District of New York.

In the Matter of the Petition of THE NORWICH and N. Y. TRANSPORTATION CO.

George Place and Charles Place, William A. Wright, Samuel Hemminway, William Bestworth, William W. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, owners of the schooner "General S. Van Vleit," and also Dan Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, owners of the cargo laden on board of said schooner "General S. Van Vleit," appellants, hereby except separately to the

findings of fact and conclusions of law made and filed herein on the 13 day of October, 1879, by the Hon. William Strong, justice, before whom said cause was tried.

I. They except to so much of this sentence contained in the first finding of fact, viz.:

"The fire was a direct consequence of the collision and inseparable from it," as is contained in the words following, viz: "and
34 inseparable from it," as unsupported by any evidence in the case.

II. They except to so much of the sixth finding of fact as is in the words following, viz:

"The motion was issued, the appellants appeared, and an order was made for an appraisement of the amount of value of the interest of the petitioners as owners respectively of said steamboat and her freight pending," &c.

III. They except to the seventh finding of fact.

They except to so much of the conclusions of law as holds that among the things determined in the "Norwich and New York Transportation Company" *vs.* Wright *et al.*, 13 Wallace, 104, and which the said justice was not at liberty to disregard, were the following:

1. The act adopts the rule of the general maritime law as measuring the liability of ship-owners for faults of the masters by which others are injured, and not the rule of the English statutes relating to the same subject.

2. The rule is applicable to the claims of all persons injured by a collision as well as to claims by freighters of cargo on the offending vessel. They are not barred by any laches of theirs.

3. The present petitioners are entitled to the protection of the act against the owners of the colliding schooner."

35 They except to so much of the conclusions of law as is in the words following, viz: "Under that law (meaning maritime law), in cases of maritime abandonment, a seizure or a judicial sale of the ship, if procured adversely to the owner, but without resistance by him, had no effect in determining the limit of his liability or deprived him of his right to abandon.

They except to so much of the conclusion of law as is in the words following, namely:

"I am therefore of opinion the district court was correct in determining that the value of the steamboat immediately after the collision and fire, as she was then lying at the bottom of the sound, together with her pending freight, is the extreme measure of the owner's liability, and is the amount to be apportioned."

They except to so much of the conclusion of law as is in the words following, viz:

"I think, therefore, the owners are not answerable to any extent for freight wholly lost, though it was pending at the time of the collision, for it had no value immediately after."

IV. They except to so much of the conclusions of law as is in the words following, viz:

"I am therefore of opinion that the petitioners in this case, who were the owners of the steamboat, are not bound to pay into the registry of the court the sum they received for insurance."

36 They except to so much of the conclusions of law as is in the words following, viz:

"The position thus taken cannot be sustained," occurring next after the words "They argue that in the proceedings *in rem* the personal liability of the petitioners is not involved, and that the act of Congress does not apply to such proceedings."

They except to so much of the said conclusions of law as affirm the taxation of costs to the proctor for the petitioners. They except to so much of the said conclusions of law as affirm the decree of the district court.

V. They except to so much of the conclusion of law as is in the following words: "It was suggested, though not pressed, during the argument before me, that even if the value of the steamboat, in the condition in which she was directly after the collision, is the maximum of the owner's liability, the appraisement should have been made of her value in the interval between the collision and the fire." They except to so much of the conclusions of law as is in the following words: "But if this were conceded, the result must have been the same. Plainly the vessel was worth no more then than she was after she had sunk. She was then a vessel inevitably

37 doomed to partial destruction by fire and to immediate foundering. The fire was much a part of the original disaster as was the breaking of the hull by the impingement of the schooner, and so was the sinking. It is impossible to separate them. By the collision the hull of the steamboat was stoven; the water poured in, driving the fire out of the furnaces into contact with the wood work, which was mostly destroyed before the hull had sufficiently filled to cause it to sink. Now, had the owners transferred to a trustee the boat at the instant after she came into contact with the schooner and before the water had risen within her sufficiently to drive her fires out from the furnaces, confessedly they would have been discharged;" as is in the following words: "But what would the trustee for the sufferers, the owner of the schooner and the freighters, have taken? Surely only a vessel in process of destruction by fire and destined to sink;" as is in the following words: "She would have been worth no more than she was at the bottom of the sound, and that value the sufferers have now under the appraisement that was made;" as is in the following words: "Besides, a transfer could not have been made before the fire, because no trustee could have been appointed by any court."

VI. They except to each and every part and the whole of the conclusions of law.

38 And inasmuch as the said several matters produced and given in evidence on the trial in the said circuit court, and by the counsel for the said claimants objected to and insisted upon, and the said exceptions do not appear by the record of the decree

of said court, the counsel for the said claimants have prepared and caused this bill of exceptions to be settled as a record thereof according to the statute in such case made and provided and the course and practice of the court.

Signed and ordered on file by the judge thereof.

Dated June 30, 1882.

WM. J. WALLACE.

39 A.

Costs of Petitioners.

District Court of the United States for the Eastern District of New York. In Admiralty.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

Off.

	Docket fee on the claim of George Place and others	$20
	Fee on reference in same	20
	Docket fee on the claim of Richard L. Campbell and others	20
	Fee on reference in same	20
20	Docket fee on claim of Bigelow Carpet Company	20
20	Fee on reference in same	20
20	Docket fee on claim of Williamantic Linen Co.	20
20	Fee on reference in same	20
20	Docket fee on claim of the Merrick Thread Co.	20
20	Fee on reference in same	20
	Docket fee on claim of the Monson Woolen Manufacturing Co.	20
	Fee on reference in same	20
40	20 Docket fee on claim of James M. Meade and others	20
20	Fee on reference in same	20
	Docket fee on claim of Chas. D. Bigelow and others	20
	Fee on reference in same	20
20	Docket fee on claim of Eliab A. Converse & others	20
20	Fee on reference in same	20
	Docket fee on claim of Seth B. Hunt and others	20
	Fee on reference in same	20
20	Docket fee on claim of Horatio W. Slater and others	20
20	Fee on reference in same	20
	Docket fee on claim of Nelson E. White	20
	Fee on reference in same	20
	Docket fee on claim of William A. Wright & others	20
	Fee on reference in same	20
	Docket fee on claim of Salisbury Mills	20
	Fee on reference in same	20
	Docket fee on claim of Stark Mills	20
	Fee on reference in same	20

	Docket fee on claim of Amoskeag Manufaturing Co	$20
	Fee on reference in same	20
	Docket fee on claim of James M. Beebe and others	20
	Fee on reference in same	20
	Docket fee on claim of Hampden Cotton Manufacturing Company	20
	Fee on reference in same	20
	Docket fee on claim of Francis M. Bardwell	20
	Fee on reference in same	20
41	Docket fee on claim of Alexander Bigelow and others	20
	Fee on reference in same	20
20	Docket fee on claim of Smithville Manufacturing Co	20
20	Fee on reference in same	20
20	Docket fee on claim of Horatio N. Slater and others	20
20	Fee on reference in same	20
20	Docket fee on claim of Oscar F. Chase and others	20
20	Fee on reference in same	20
	Docket fee on claim of John Slater and others	20
	Fee on reference in same	20
20	Docket fee on claim of H. C. Sales and others	20
20	Fee on reference in same	20
20	Docket fee on claim of Charles H. Kenyon and others	20
20	Fee on reference in same	20
20	Docket fee on claim of Charles Osgood and others	20
20	Fee on reference in same	20
20	Docket fee on claim of Leonard M. Hills and others	20
20	Fee on reference in same	20
	Docket fee on claim of C. & C. G. Winchester	20
	Fee on reference in same	20
20	Docket fee on claim of Smedley Bros. & Co	20
20	Fee on reference in same	20
20	Docket fee on claim of Shetucpet Co	20
20	Fee on reference in same	20
20	Docket fee on claim of Whitstone Co	20
20	Fee on reference in the same	20
42 20	Docket fee on claim of Hall, Southwick & Co	20
20	Fee on reference in the same	20
	Docket fee on claim of Chas. Miles & Co	20
	Fee on reference in the same	20
20	Docket fee on claim of J. & E. Wright & Co	20
20	Fee on reference in the same	20
20	Docket fee on claim of Connersville Manufac. Co	20
20	Fee on reference in the same	20
20	Docket fee on claim of Henry T. Jenkins & Co	20
20	Fee on reference in the same	20

Disbursements:		
Oath to petition	$0	25
Printer's bill for publication of order for appraisement	265	40
Proof of service of copy order on libellants' proctors		25
Proof of service of notice of reference		25
Stenographer's fees for copy, testimony of John Englis	4	
Clerk's fees for copy, opinion of court overruling exception	4	25
Printer's bill for printing order	10	
Postages paid		38
	$1,764	78
43 Brot f'w'd	$1,764	78
Clerk's costs	47	70
	$1,812	48
Lithographing decree	8	63
	$1,821	11
Deduct	800	
Amount of bill	$1,021	11
Commissioner's fees	35	
Clerk's fees, (additional)	27	05
	$1,083	16

Taxed and adjusted at one thousand and eighty-three 16-100 dollars, this 15th day of November, 1878.

B. LINCOLN BENEDICT, *Clerk.*

GENT.: Please to take notice, that the foregoing bill of costs will be presented for taxation to the clerk of this court, at his office in the U. S. court rooms, in the city of Brooklyn, on the 18th day of December, inst., at 9½ o'clock in the forenoon of that day.

Dated N. Y., December 14th, 1876.

Yours, &c.,

J. W. C. LEVERIDGE,
Pr. for Petitioners.

44 To—

J. Langdon Ward, Esq.,
Pr. for George Place and others.
Martin & Smith, Esq'r's,
Pr's for Campbell and others.
A. McCue, Esq.,
Proctor for Bigelow Carpet Co.
Dimmick & Perry, Esq'r's,
Proctors for Williamantic Linen Co.

P. S. Crooke, Esq.,
Proctor for Hampden Cotton Manufacturing Co., and others.
Gratz Nathan, Esq.,
Proctor for Merrick Thread Co.
Kittridge & Rice, Esq'r's,
Proctors for Bigelow and others.
A. L. Edwards, Esq.,
Proctor for Converse and others.
Brown, Hall & Vanderpool, Esq'r's,
Proctors for Hunt & others.
45 Peter B. Olney, Esq.,
Proctor for Nelson D. White.
Edward L. Owen, Esq.,
Proctor for Slater and others.
B. F. Watson, Esq.,
Proctor for James M. Meade and others.
R. H. Huntley,
Pr. for libellants.

We hereby admit due and sufficient service of a copy of the above bill of costs, and of a notice of taxation, of which the above is a copy.
Dated December 14th, 1876.

J. LANGDON WARD,
Pr. for George Place and Others.
MARTIN & SMITH,
Proctors of Campbell and Others.
A. McCUE,
Proctor for Bigelow Carpet Co.
DIMMICK & PERRY,
Pr. for Williamantic Linen Co.
PHILIP S. CROOKE,
Proctor for Hampden Cotton Man. Co. and Others.
GRATZ NATHAN,
Pr. for Merrick Thread Co.
46 KITTRIDGE & RICE,
Pr's for Bigelow and Others.
A. L. EDWARDS,
Pr. for Converse and Others.
BROWN, HALL & VANDERPOOL,
Pr's for Hunt and Others.
PETER B. OLNEY,
Pr. for Nelson D. White.
B. L. OWEN,
Pr. for Slater and Others.
B. F. WATSON,
Pr. for James M. Meade and O'rs.
R. H. HUNTLEY,
Pr. for Libellants.

Endorsed: Costs of petitioners and proof of service. Filed Nov. 18th, 1878.

We hereby consent that the motion for the payment of the within costs be granted, and that the within bill of costs be paid.

January 20, 1879.

R. H. HUNTLEY,
Pr. for Wright and Others.
MARTIN & SMITH,
Pr's for Richard L. Campbell and Others.
PHILLIP S. CROOKE,
Pr. for Hampden Manufacturing Co. and Others.
E. LOWEN,
Pr. for Horatio W. Slater and Others.
47 BROWN, HALL & VANDERPOOL,
Pr's for Seth B. Hunt and Others.

B.

To the Honorable Charles L. Benedict, judge of the district court of the United States of the eastern district of New York.

The amended libel of George Place and Charles Place, partners, under the firm name of G. & C. Place, against the steamboat City of Norwich, her engines, boiler, tackle, apparel, and furniture, whereof The Norwich and New York Transportation Company, a foreign corporation, organized under the laws of the State of Connecticut, are the owners, and were so at the time of the collision hereinafter set forth, alleges:

First. That before and at the time of the collision, hereinafter named, these libellants were the owners of one locomotive, driving-wheel, lathe with fixtures and appurtenances complete, two engine lathes, with fixtures and appurtenances, and six hand lathes, with fixtures complete, the value of which was in the aggregate eight thousand dollars.

Second. Libellants further allege, on information and belief, that said last-mentioned machinery and tools was placed upon said steamboat City of Norwich, at Norwich, in the State of Connecticut, on the 17th day of April, 1866, to be transported to the
48 city of New York.

Third. Libellants further allege, on information and belief, that on the evening of the seventeenth day of April, 1866, aforesaid, the said steamboat sailed from Norwich, in the State of Connecticut, for the port of New York, with the said machinery and tools on board in good order and well conditioned. That while on her voyage, and upon Long Island Sound, about seven or eight miles northwesterly of Eaton's Neck, between half past three and four o'clock on the morning of April 18th, 1866, said steamboat came in collision with a schooner named General S. Van Vliet, whereof William A. Wright was commander.

That in consequence of said collision the said steamboat was set on fire and partially burned, finally sinking with all her freight on board.

That at the time of said collision the wind was about northeast by east, a light breeze of about three or four knots.

The said schooner was heading down the sound bound for New Haven and the steamboat going up the sound bound for New York as aforesaid.

The steamboat was moving at the rate of ten or twelve knots; that said steamboat was about twelve hundred tons burden; the schooner was on her starboard tack standing nearly north, and the course of the steamboat was west by south.

49 That the schooner had her lights properly set, and at the time of, and for a long time prior to the collision, they were burning brightly so they could have been seen at a great distance and in time to avoid the collision had the officers and crew of the steamboat been diligent and careful in the management thereof.

But these libellants allege, on information and belief, that said steamboat was carelessly and negligently managed by the officers and crew thereof, and that said officers and crew, or those who were on watch, were either negligent in not discovering said schooner in time to avoid the collision, or, seeing said schooner and her lights, were grossly negligent in not causing said steamboat to be stopped before colliding, or causing her course to be changed.

Fourth. That these libellants have sustained damage by the loss of said machinery, tools, &c., in the sum of eight thousand dollars, which the owners of said steamboat refuse to pay.

Wherefore libellants pray process, &c., as prayed for in the original libel heretofore filed by the libellants against said steamboat, her engines, boilers, &c.

GEORGE PLACE.
CHARLES PLACE.

Sworn to before me, this 29th day of January, 1867.

C. W. NEWTON,
United States Commissioner.

50 EASTERN DISTRICT OF NEW YORK, *ss:*

I, B. Lincoln Benedict, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a true copy of an original amended libel on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 14th day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

B. LINCOLN BENEDICT, *Clerk.*

51 C.

To the Honorable Charles L. Benedict, judge of the district court of the United States, within and for the eastern district of New York:

The Norwich and New York Transportation Company, claimants

of the steamboat City of Norwich, her engines, boiler, tackle, apparel, and furniture, intervening for their interests therein, for answer to the amended libel and complaint of George Place and Charles Place against the said steamboat, her engines, &c., allege and propound as follows:

First. These claimants admit that they are a corporation created by or under the laws of the State of Connecticut, and were the owners of the steamboat City of Norwich at the several times in the libel alleged, and they are still the owners thereof. They are ignorant, and therefore deny, that the libellants were the owners of, or that the machinery and property were of the value of eight thousand dollars, as alleged in the first article of the libel.

Second. These claimants admit and say there had been shipped and there were on board of the said steamboat, and which were destroyed by fire, as hereinafter stated, certain machinery and property of the kind stated in the first article; but they say that the same was delivered to and received in and on board of the
52 said steamboat, to be thereby transported to New York under a special contract or agreement, whereby the owners or shippers assumed and agreed to take, and did take, all risks of every kind during the course of transportation, and they deny the allegations of the second article of the libel in anywise to the contrary thereof.

Third. The claimants admit that the steamboat with the merchandise and property shipped on board thereof departed from Norwich, in the State of Connecticut, on the seventeenth day of April, 1866, and that afterwards, and somewhere between half-past three and four o'clock a. m., on the eighteenth of that month, when in Long Island Sound, somewhere off or to the westward of Stamford, in the lawful prosecution of her voyage, a collision occurred without any fault on her part between her and the schooner General S. Van Vliet, whereby the said steamboat was set on fire, and she and her cargo thereby burnt and destroyed, as hereinafter more particularly stated.

They also admit that the schooner was at the time of such collision on her starboard tack, heading nearly north, with the wind about northeast by east, and going about three or four knots, and that the steamboat, which was about twelve hundred tons burthen, was heading west by south quarter south, and going ten or eleven miles an hour; but they deny each and every other allegation as contained in the third article of the libel.

53 Fourth. These claimants aver, upon information and belief, that the schooner was before, and at the time of collision, sailing without having a proper or sufficient light set and burning as required by law, and that in consequence thereof she could not have been seen, and was not seen, by those in charge of the steamboat until they were within a very short distance from her; that the steamboat had all her lights properly set and burning; that she was under the command of a skillful pilot, and had a competent lookout properly stationed and attending to his duty, but owing to the dimness of the light of the schooner by reason of its imperfections, it was impossible to discover her at any earlier moment or in time

to have avoided the collision; that as soon as she became visible every effort was made on the part of those navigating the steamboat which was possible to avoid the collision, and no fault was committed on their part.

They further say that those on the schooner saw the steamboat when several miles distant, and knew that her course was crossing that upon which the schooner was sailing, and they also knew (and which was the fact) that the collision might have been avoided with perfect ease, certainly and safely, by luffing, yet they pertinaciously and wrongfully held on and thereby carelessly, negligently, and wrongfully ran into the said steamboat, striking her on her port side, fifty feet or thereabouts abaft the stem, causing the said steam-
54 boat to take fire, which burnt and destroyed the merchandise and property in the libel mentioned, with all the other merchandise and property which was on board thereof.

Fifth. These claimants further say that the said collision and fire were not, nor was either, caused by any fault or negligence on the part of those in charge of and navigating the said steamboat. But if it should appear from the case made by the pleadings and proofs that there was any such fault or negligence causing or tending to cause the collision and fire, still these claimants aver that they, as owners of said steamboat, are not responsible therefor, because they say that such collision and fire were not, nor were either, in any manner caused by any design or neglect, or with any privity or knowledge whatever on their part, and therefore they insist that under and by virtue of the act of Congress, limiting the liability of shipowners, passed March 3rd, 1851, they are not liable, nor is their said steamboat liable in this action, to answer for or to make good the libellants' alleged loss and damage or any part thereof.

Sixth. The claimants further say that after the aforesaid steamboat, her engines, &c., (which had been raised and brought into this district) had been arrested by the marshal of this district, under the process issued out of this court for that purpose, and while the said steamboat, her tackle, &c., were in his custody, these claim-
55 ants applied to this court for an order granting them leave to bond the said steamboat, her engines, &c., in the full value thereof, so as to discharge her from custody and to relieve her from liability to further arrest for or on account of any claims existing against her, arising out of the aforesaid collision and fire, and such proceedings were thereupon had upon the said application, that an order was made and entered in this suit on the twenty-sixth day of January, 1867, whereby it was referred to one of the commissioners of this court to ascertain, appraise, and report to this court the value of the said steamboat, her engines, tackle, &c., and that upon the coming in of said report these claimants give a stipulation, with sufficient sureties, according to the course and practice of this court, on the bonding of vessels, in the amount so reported, and that such stipulations should be for the benefit of the libellants herein, (in case they should establish the liability of the said steamboat,) and of all persons and parties who might, by due proceedings in this court, show themselves entitled to liens upon

the said steamboat by reason of such collision and fire, and that upon the entering into and filing of such stipulation the said steamboat, her engines, boilers, tackle, apparel, and furniture should be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation should be given, and that the libellants and all other persons and
56 parties having liens on the said steamboat, her engines, boilers, tackle, apparel, and furniture, for loss or damage by reason of such collision and fire, were thereby declared to be bound by the said order; that such proceedings were thereupon afterwards had before the said commissioner under the said order; that the said commissioner ascertained and reported to the said court that the said steamboat, her engines, &c., was of the value of seventy thousand dollars, which said report was duly confirmed, and thereupon the claimants made and entered into a stipulation in the above sum, with sufficient sureties, according to the course and practice of this court, as directed by said order, which said stipulation was duly filed with the clerk of the court, and thereupon the said steamboat was discharged from custody, as by the said stipulation, order, and proceedings, now remaining of record in the office of the clerk of this court, will on reference thereto more fully appear, and to which the claimants pray leave to refer. These claimants further say that there was a large quantity of goods, merchandise, and other property on board the said steamboat, at the time of the collision and fire, being transported thereby, belonging to divers persons and parties, whose names are unknown to the claimants, and which, as well as the property in the libel alleged to have been on board, were burnt, consumed, and destroyed by the aforesaid collision and fire; that such goods, merchandise, and property
57 greatly exceeded in value and amount the value of said steamboat, her engines, &c., and of her freight pending at the time of the said collision; that each of the said freighters and owners of the said cargo stand upon the same footing, as the claimants believe, as the libellants in this action, and that if it shall appear that the libellants have a valid lien or claim upon the said steamboat, her engines, &c., to satisfy their demand in the libel mentioned (which is not admitted), then such other parties have a like lien or claim upon the said steamboat, and the aforesaid stipulation is and will be held for their benefit, as well as for the benefit of the libellants herein. The claimants therefore insist that the other freighters and claimants should be made parties to this action, or the libel herein should be so framed as that it shall be on behalf of the libellants and such other parties as may lawfully intervene for their interest in the said stipulation, to the end that there may be but one litigation arising out of the same calamity, and that these claimants and all parties interested may be protected in their rights by the decree of this court to be made herein.

Seventh. These claimants further say, that inasmuch as the whole value of the steamboat, her engines, &c., and of the freight pending at the time of the above collision and fire, is not, as above alleged, sufficient to make compensation in full to each of the several

58 freighters and owners of the goods, merchandise, and property on board; that the libellants and the other freighters and owners, if entitled to recover any portion of their said claim or loss, are only entitled, under the act of Congress and the order above referred to, to recover and receive compensation out of the value of the said steamboat and freight pending in proportion to their respective losses, and that the libellants are not entitled, under any circumstances, to recover any more, nor are the claimants in any way liable for any greater sum in this suit than such just proportion.

That all and singular the matters herein contained are true, in verification whereof, if denied, the claimants crave leave to refer to the depositions and proofs to be taken and exhibited herein.

Wherefore, the claimants pray that this honorable court will be pleased to pronounce against the libel herein, and that the same may be dismissed, with costs to these claimants to be taxed.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY,
By JULIUS WEBB,
General Agent and Manager.
J. W. C. LEVERIDGE,
Proctor for Claimants and Respondents.

59 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Julius Webb, being duly sworn, says: That he is the general manager and agent of the Norwich and New York Transportation Company, the above-named claimants. That the said company is a foreign corporation incorporated by or under the laws of the State of Connecticut, and their principal place of business is the city of Norwich, in the said State, and the officers of the said company are now absent from this State, and from the eastern district of New York. That deponent has heard the above answer read, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief, and as to those matters deponent believes it to be true.

JULIUS WEBB.

Sworn this 9th day of April, 1867, before me—
JOHN A. OSBORNE,
United States Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

I, B. Lincoln Benedict, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a true copy of an original answer on file and remaining of record in my office.

60 In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 21st day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

B. LINCOLN BENEDICT, *Clerk.*

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The petition of the Norwich and New York Transportation Company respectfully showeth:

That your petitioners are a foreign corporation, created by and existing under the laws of the State of Connecticut, and are the sole owners of the said steamboat City of Norwich, her engines, tackle, apparel, and furniture.

That early in the morning of the eighteenth day of April last past a collision occurred upon the waters of Long Island Sound, near Huntington light on said Long Island Sound, between the said steamboat City of Norwich, an American vessel, of which your petitioners were then the owners, and the schooner or vessel
61 called the General S. Van Vliet, the said steamboat being then bound on her regular trip from the city and port of New London, in the State of Connecticut, to the city and port of New York, with a cargo consisting of goods, wares, and merchandise on board.

That in consequence of such collision, the said steamboat was set on fire and soon afterwards sunk, with all her said cargo on board of her.

That such collision and fire were occasioned and incurred without the design, neglect, privity, or knowledge of your petitioners.

That on or about the twenty-third day of August last past, the libel herein was filed by the above-named libellants against the said steamboat, &c., to recover the sum of eight thousand dollars for damages, which the libellants allege they have sustained by reason of the destruction of certain articles of merchandise, specified in said libel, which it is therein alleged were shipped on board said steamboat, and upon the filing of said libel process was issued out of this court, at the instance of the said libellants, under which the said steamboat, &c., (the same having been raised and brought to the port of New York), was seized by the marshal of the said eastern district, and is now in the custody of this court.

That the said steamboat City of Norwich was freighted with
62 a large cargo, consisting of goods, wares, and merchandise, consigned and belonging to a very large number of individuals, companies, and firms, whose names are unknown to your petitioners, and the same was to be delivered by said steamboat at the city of New York, and that by reason of the said collision and fire the said steamboat became a total wreck, and was unable to proceed on her said trip aforesaid.

And your petitioners further show that the owners and consignees of the goods on board of said steamboat were very numerous, and your petitioners have reason to believe, and do believe, that in addition to the claim made by libellants herein, other claims, on behalf of the owners of other portions of said cargo on board of said steamboat at the time of said collision and fire, will be made against your petitioners, as owners of said steamboat, &c., or against the steamboat, her tackle, apparel, and furniture, and suits and proceedings will be instituted to recover the same, which claims, if established,

will greatly exceed the value of said seamboat, &c., and of her freight pending at the time of such collision, fire, and loss.

Your petitioners therefore pray that they may be declared as entitled to the benefit of the act of Congress of the United States, entitled "An act to limit the liability of shipowners, and for other purposes," passed on the third of March, 1851. (9 U. S. Stat. at Large, page 365.) That the said steamboat, her engine, tackle,
63 apparel, and furniture, and her freight, then pending at the time of the said collision and fire, may be appraised by appraisers to be appointed by this court; that your petitioners may be authorized to give a stipulation, with good and sufficient sureties, according to the rules and practice of this court, for such appraised value, such stipulation to be for the benefit of the libellants herein (in case they shall establish the liability of the said steamboat), and of all other claimants who may, by actions or otherwise, intervene and prove to be legally entitled to compensation for losses sustained by reason of said collision and fire, in proportion to the amount of the respective losses of all such claimants, and that upon the due execution of such stipulation the said steamboat, her engines, tackle, apparel, and furniture, as well as the owners thereof, may be discharged from all liability for all losses incurred by reason of such collision and fire, and that your petitioners may have such other or further relief as may be just and proper in the premises, and as this court shall be pleased to grant.

THE N. AND N. Y. TRANS. CO.,
By DAVID SMITH, *Pres.* [L. S.]
J. W. C. LEVERIDGE, *Proctor.*

64 SOUTHERN DISTRICT OF NEW YORK, *ss:*

David Smith, of the city of Norwich, and State of Connecticut, being duly sworn, says: That he is the president of the Norwich and New York Transportation Company, the petitioner named in the above petition, and one of the officers of said company; that the seal affixed to the above petition is the corporate seal of the said company, and was affixed thereto by authority of said company, and deponent signed the same as such president by like authority.

And the deponent further says that he has heard the above petition read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

DAVID SMITH, *President.*

Sworn, this 2nd day of October, 1866, before me.
GEO. F. BETTS,
U. S. Commissioner.

65 E.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States

court-rooms in the city of Brooklyn on the 26th day of January, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: Honorable Charles L. Benedict, district judge.

GEO. PLACE and CHAS. PLACE

vs.

THE STEAMBOAT OR VESSEL CALLED THE CITY OF NORWICH, HER TACKLE, APPAREL, AND FURNITURE.

On reading and filing the petition of the Norwich and New York Transportation Company, the owners and claimants of the above-named steamboat, City of Norwich, her engine, tackle, apparel, and furniture, together with admission of service thereof and of notice of motion on the proctor of the libellants herein, and due proof having been filed of the publication of an order heretofore made in this cause requiring all parties having claims against the said steamboat or her owners arising out of the collision, fire, and loss mentioned in said petition, to show cause, if any they have,
66 why the prayer of the said petitioner should not be granted, &c., and after hearing the counsel of the said petitioners in support of the said petition, and R. H. Huntley, Esq., of counsel for the libellants in this cause, and also the counsel for other parties who claim damages by reason of losses alleged to have been sustained by them, occasioned by the collision and fire mentioned in said petition, in opposition thereto, and the owners and claimants of the said steamboat, &c., having thereafter applied to bond the said steamboat according to the rules and practices of this court in admiralty, and it appearing that the present value of the said steamboat, &c., is the same as her value immediately previous to said accident, and mature deliberation being thereupon had, it is, on motion of J. W. C. Leveridge, of counsel for said petitioners, ordered that it be referred to Charles W. Newton, Esq., one of the commissioners of this court, upon at least two days' notice to all proctors for the libellants who have filed libels against the said steamboat, to ascertain, appraise, and report to this court the present value of the said steamboat, her engine, tackle, &c., and that upon the coming in of said report the said Norwich and New York Transportation Company, as such owners and claimants of said steamboat, &c., give a stipulation, with sufficient sureties, according to the course and practice of this court on the bonding of vessels, in the amount so re-
67 ported, and that such stipulation be for the benefit of the libellants herein (in case they shall establish the liability of the said steamboat) and of all persons and parties who may by due proceedings in this court show themselves entitled to liens upon upon said vessel, by reason of such collision and fire; and that upon the entering into and filing of such stipulation the said steamboat, her engine, boiler, tackle, apparel, and furniture be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation is given.

And it is further ordered that the said libellants and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or damages by reason

of such collision and fire be, and they are hereby declared to be, bound by this order.

SAMUEL T. JONES, *Clerk.*

68 F.

District Court of the United States for the Eastern District of New York.

GEORGE PLACE and CHARLES PLACE
vs.
THE STEAMBOAT OR VESSEL CALLED THE CITY OF NORWICH.

In pursuance of an order made in the above-entitled cause, whereby among other things it was referred to the undersigned, a United States commissioner, to ascertain and report the present value of the steamboat City of Norwich, I, Charles W. Newton, United States commissioner, to whom the said matter was referred, do report that I have been attended by the proctor for the claimants and the proctors for the several libellants, who have filed libels against said vessel, to wit, H. C. Place, Esq., proctor for George Place and Charles Place; Messrs. Martin & Smith, proctors for Richard L. Campbell, Stark Mills, Salisbury Mills, Amoskeag Manufacturing Company, and James M. Beebe; R. W. Townsend, Esq., proctor for James H. Diggles; Messrs. Fimmick & Perry, proctors for Williamantic Linen Company; Gratz Nathan, proctor for Merrick

69 Thread Company; and due proof of the service of a notice of reference having been served on Alexander McCue, Esq., proctor for Bigelow Carpet Company; and having taken and examined all the testimony offered on behalf of the claimants, none being offered by the libellants; and do find the present value of the steamboat City of Norwich, her tackle, &c., to be seventy thousand dollars ($70,000). All of which is respectfully submitted.

Dated March 11th, 1867.

CHAS. W. NEWTON,
U. S. Commissioner.

(Endorsed:) Report of value of vessel. Filed March 22nd, 1867.

70 G.

District Court of the United States, Eastern District of New York.
In Admiralty.

Whereas a libel was filed on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and sixty-six, by George Place and Charles Place, against the steamboat or vessel called the City of Norwich, her engine, tackle, apparel, and furniture, for the reasons and causes in said libel mentioned;

And whereas the said steamboat City of Norwich, &c., is in the custody of the marshall of this district, under the process issued in pursuance of the prayer of said libel;

And whereas, since the filing of said libel, certain other libels have been filed for and in behalf of certain other libellants against the said

steamboat, &c., for the reasons and causes in the respective libels mentioned and set forth, and the said vessel is also in the custody of said marshall under the processes issued in pursuance of the prayers of said libels respectively.

And whereas upon the petition of The Norwich and New York Transportation Company, as sole owners and claimants of the said steamboat, &c., an order was made and entered in this cause
71 on the 26th day of January last past, whereby it was ordered that it be referred to Charles W. Newton, Esq., one of the commissioners of this court, upon at least two days' notice to all the proctors for the libellants who have filed libels against the said steamboat, to ascertain, appraise, and report to this court the present value of the said steamboat, her engine, tackle, &c., and that upon the coming in of said report, the said The Norwich and New York Transportation Company, as such owners and claimants of said steamboat, &c., have leave to give a stipulation with sufficient sureties according to the course and practice of this court on the bonding of vessels, in the amount so reported, and that such stipulation be for the benefit of the libellants herein (in case they should establish the liability of the said steamboat), and of all persons and parties who might, by due proceedings in this court, show themselves entitled to liens upon said vessel, by reason of the collision and fire mentioned in the said petition, and that upon the entering into and filing of such stipulation, the said steamboat, her engine, boiler, tackle, apparel, and furniture, should be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation should be given; and in and by which said order, it was further ordered, that the said libellants and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or dam-
72 age by reason of such collision and fire, should be, and they were declared to be, bound by said order, as by reference to the said petition and order now on file in the office of the clerk of this court will more fully appear.

And whereas the said commissioner, in pursuance of said order, has made his report to this court, from which it appears that, from the proofs taken by him, he did find the present value of the said steamboat City of Norwich, her tackle, &c., to be the sum of seventy thousand dollars ($70,000), as appears by his said report now on file in the office of the clerk of this court, which said report has been confirmed.

And whereas the undersigned, The Norwich and New York Transportation Company above-named have filed a claim to said steamboat, &c., as sole owners thereof in each of the actions already commenced in this court, and as such claimants and owners with their sureties, the parties hereto have applied to the court for leave to give this stipulation and to have the same to stand in place of the said steamboat, &c., to be enforced in such manner as the court may, from time to time, order and direct for the benefit, respectively, of all parties who have already filed, or may hereafter file, libels in this court against the said steamboat, &c., to establish or enforce any lien

or claim upon or against her arising out of the said collision and fire.

73 And the undersigned, the parties hereto, hereby consenting and agreeing that the said claimants and owners, The Norwich and New York Transportation Company, parties hereto, in all cases in which libels may hereafter be filed in this court against the said steamboat, &c., to enforce liens or claims upon or against the said steamboat, &c., by reason of said collision and fire, upon notice thereof to them, or to J. W. C. Leveridge, Esq., their proctor, or to such other proctor as may be substituted in his stead herein, to be given by publication or otherwise, as the court may direct, will, within the times limited by the court, enter an appearance in such causes without service of process, which is hereby waived, and that in default of such appearance, such proceedings may be had and such decree made in such cases respectively as to the court may seem proper, and with the like effect as if said owners and claimants and their sureties, the parties hereto, had appeared and consented thereto.

And the parties hereby further consenting and agreeing that they will, to the extent of the amount of this stipulation, abide by and perform all orders and decrees of this court, made or to be made in any proceeding taken or to be taken in this court, or in any appellate court, to secure the payment of any lien upon the said

74 steamboat, her engines, machinery, and furniture, in place of which this stipulation is substituted, which may have arisen by reason of the collision and fire above referred to, and that in case of default or contumacy on the part of the said owners or claimants, or their sureties, execution or executions, not in all to exceed the amount of this stipulation for the value of said steamboat, to wit, seventy thousand dollars with interest thereon from this date, may issue against their goods, chattels, and lands.

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall, upon the final order or decree of the said district court made and entered in the above suit, and in any suit or proceeding commenced, or which may be commenced in said court to establish and enforce any lien or claim upon the said steamboat, &c., by reason of the collision and fire in the aforesaid libel and in the said petition mentioned, or upon the final decree of any appellate court to which any or either of such suits or proceedings may be carried, and upon notice of such order or decree to the parties hereto, or either of them, or to J. W. C. Leveridge, proctor for the claimants of said steamboat, &c., or to such proctor as may be substituted in his stead herein, abide by all interlocutory orders and decrees of the court, and pay the money awarded to the respective parties in and by all such final decrees rendered by

75 this court or the appellate court (if any appeal intervene), not exceeding in the aggregate the said sum of seventy thousand

dollars, with the interest thereon from the date hereof, then this stipulation to be void; otherwise, to remain in full force and virtue.

THE NORWICH AND NEW YORK TRANSPORTATION CO.,
By JULIUS WEBB, *General Manager.*

JAMES L. DAY. [L. S.]
ALBERT CLARK. [L. S.]
E. A. PACKER. [L. S.]
JOHN ENGLIS. [L. S.]

Taken and acknowledged, this 28th day of March, 1867, before me—

CHAS. W. NEWTON,
U. S. Com'r.

EASTERN DISTRICT OF NEW YORK, *ss:*

Albert Clark, James L. Day, John Englis, and Elisha A. Packer, parties to the above stipulation, being each duly sworn, depose and say that he is worth the sum of one hundred and forty thousand dollars, over and above all his just debts and liabilities, and that they each reside in the State of New York.

ALBERT CLARK.
JAMES L. DAY.
JOHN ENGLIS.
E. A. PACKER.

Sworn before me, this 28th day of March, 1867.

CHAS. W. NEWTON,
U. S. Com'r.

(Endorsed:) Stipulation for value. Filed March 29, 1867.

H.

76 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 23rd day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Present: The honorable Charles L. Benedict, district judge.

GEORGE PLACE *et al.*
vs.
THE STEAMBOAT "CITY OF NORWICH," &C.

This cause having been heard upon the pleadings and proofs, and submitted upon the arguments and briefs of the advocates of the respective parties, and due deliberation having been had thereon:

Now, on motion of H. C. Place, Esq'r., proctor for libellants, it is ordered, adjudged, and decreed that the said libellants recover in this cause their damages sustained by reason of the matters
77&78 set forth in the libel herein, and that said steamboat "City of Norwich," &c., be condemned therefor.

And on like motion, it is further ordered that it be referred to one of the commissioners of this court to ascertain the amount of the libellants' damages, as above stated, and report thereon to this court with all convenient speed.

CHAS. L. BENEDICT.

EASTERN DISTRICT OF NEW YORK, *ss:*

I, B. Lincoln Benedict, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the foregoing is a true copy of an original order on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of Brooklyn, in the eastern district of New York, this 14th day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

B. LINCOLN BENEDICT, *Clerk.*

79 EXHIBIT "I."

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The petition of "The Norwich and New York Transportation Company" respectfully showeth:

That your petitioners are a foreign corporation, created by and existing under the laws of the State of Connecticut, and are the sole owners of the steamboat City of Norwich, her engine, tackle, apparel, and furniture.

That on the morning of the eighteenth day of April, 1860, a collision occurred near Huntington Light, on Long Island Sound, between the said steamboat City of Norwich, an American vessel, of which your petitioners were then and are now the owners, and the schooner or vessel called the General S. Van Vliet, the said steamboat being then bound on her regular trip from the city and port of New London, in the State of Connecticut, to the city and port of New York, with a cargo consisting of goods, wares, and merchandise on board, which belonged to different shippers and owners, a copy of the manifest of the cargo on board the said steamboat at the time of the collision and fire hereinafter mentioned, being hereunto annexed and marked Exhibit A, which exhibit includes the names of all parties who have, or make any claim against said steamboat or her owners, by reason of the collision, fire, and loss herein
80 stated, except the owners of the said schooner General S. Van Vliet and her cargo, as your petitioners verily believe.

That in consequence of such collision the said steamboat was set on fire, and soon afterwards sank in the vicinity of the place of collision with all her said cargo on board of her, except such portions thereof as were burned, or that floated off from her, and said steamboat became a total loss.

That such collision and fire were occasioned or incurred without the design, neglect, privity, or knowledge of your petitioners.

That after the said steamboat and her said cargo was so sunk and lost as aforesaid, she was raised by salvors and brought to the port of New York at an expense of over $40,000, and that the said steamboat was worth when she was so brought to the port of New York not to exceed the sum of $22,500, and your petitioners afterwards became possessed of the said vessel, and repaired her at great expense; that on or about the twenty-third day of August, 1866, a libel was filed by George Place and Charles Place against the said steamboat, &c., to recover the sum of eight thousand dollars for damages which the libellants alleged they had sustained by reason of the destruction of certain articles of merchandise specified in said libel, which it is therein alleged were shipped on board of said steamboat, and upon the filing of said libel process was issued out of this court at the instance of the said libellants, under which the said steamboat, &c., was seized by the marshal of the said eastern district of New York.

That the said steamboat City of Norwich was freighted with a large cargo consisting of goods, wares, and merchandise consigned and belonging to a very large number of individuals, com-
81 panies, and firms, many of whose names are unknown to your petitioners, and the same was to be delivered by said steamboat at the city of New York, and that by reason of the said collision and fire the said steamboat became a total wreck, and was unable to proceed on her said trip aforesaid, and to make such delivery.

And your petitioners further show that the owners and consignees of the goods on board of said steamboat were very numerous, as appears from said Exhibit A hereunto annexed, and that in addition to the claim made by the said George Place and Charles Place as such libellants a large number of libels have been duly filed in this district against said steamboat on behalf of the owners of other portions of said cargo on board of said steamboat at the time of said collision and fire, and other claims for damages, by reason of loss of freight shipped, are made against the said steamboat or against your petitioners as the owners thereof, and suits and proceedings have been instituted to recover the same; schedules of which said suits and proceedings in this district are hereunto annexed, lettered B and C. That Schedule D hereunto annexed shows the aggregate amount of the damages reported by the commissioner as due libellants in suits and proceedings in this district, and that Schedule E hereunto annexed shows the aggregate amount of claims which have not been proved in suits and proceedings in this district.

That James H. Diggles and others having a claim for goods alleged to have been lost by said collision and fire, amounting to the sum of $2,412.28, filed their libel against the said steamboat in this district to recover the value thereof, which suit was discontinued by them on or about the 4th day of December, 1868, and an action was commenced by them against your petitioners in the supreme
82 court of the State of New York, for the same cause of action, which suit subsequently removed into the circuit court of the

United States in the second circuit, upon the application of your petitioners, and is now at issue therein.

That William A. Wright and others, owners of the said schooner and her cargo, instituted a suit *in personam* against your petitioners, in the district court of the United States for the district of Connecticut, to recover about the sum of $30,000 for damages alleged to have been sustained by them. That Merwin and Bray and the Converseville Manufacturing Company have also severally commenced actions in the superior court of the State of Connecticut to recover damages for freight, lost on board of said steamboat, the amount of the claim of Merwin and Bray being about the sum of $2,000, and the amount of the claim of Converseville Manufacturing Company being about the sum of $5,000, as is alleged by them respectively, and which suits in the superior court are still pending, and there are also a large number of other claimants who have not instituted proceedings or suits, who make claims against your petitioners for damages occasioned by the collision and fire above mentioned, the total amount of all which claims greatly exceed the value of the said steamboat, &c., and her freight pending at the time of such collision, fire, and loss.

That your petitioners duly intervened and claimed the said steamboat, and made an application to this court that they might be declared as entitled to the benefit of the act of Congress of the United States, entitled "An act to limit the liability of ship owners and for other purposes," passed on the third day of March, 1851,

(IX U. S. Stat. at Large, page 635), that the said steamboat,
83 her engine, tackle, apparel and furniture, and her freight, then pending at the time of the said collision and fire, might be appraised by appraisers to be appointed by this court, and that your petitioners might be authorized to give a stipulation, with good and sufficient sureties, according to the rules and practice of this court for such appraised value, such stipulation to be for the benefit of the libellants, George Place and Charles Place (in case they should establish the liability of the said steamboat), and of all other claimants who might, by actions or otherwise, intervene and prove to be legally entitled to compensation for losses sustained by reason of said collision and fire, in proportion to the amount of the respective losses of all such claimants, and that upon the due execution of said stipulation, the said steamboat, her engine, tackle, apparel, and furniture, as well as the owners thereof, might be discharged from all liability for all losses incurred by reason of such collision and fire, and that your petitioners might have such other or further relief as might be just and proper in the premises, and as this court should be pleased to grant.

That such proceedings were had upon such application that this court made an order, referring it to one of the commissioners of this court, to ascertain, appraise, and report the then present value of the said steamboat (such valuation being the same as her value immediately previous to the accident), and that upon the coming in of said report your petitioners give a stipulation with sufficient sureties in the amount so reported, such stipulation to be for the benefit of

the said libellants, George Place and Charles Place (in case they should establish the liability of said steamboat), and of all persons and parties who might, by due proceedings in this court, show themselves entitled to liens upon the said vessel by reason of such collision and fire, and that upon the entering into and filing of
84 said stipulation, the said steamboat be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation was given, and that the said libellants, George Place and Charles Place, and all other persons and parties having liens on the said steamboat, &c., for loss or damage by reason of such collision and fire, be, and they were thereby, declared to be bound by said order, as by reference to said order will more fully appear.

That the said commissioner proceeded under said order to ascertain the value of said steamboat, and on the 11th day of March, 1867, made his report that the value of the said steamboat was $70,000 at the time of his said report, the said steamboat having at that time been repaired, which said report was duly filed on the 23rd day of March, 1867.

That your petitioners thereupon entered into a stipulation with sufficient sureties, pursuant to said order, which said stipulation was duly filed on the 29th day of March, 1867, and the said steamboat was thereupon discharged from custody.

That the trial of the said suit of George Place and Charles Place against the said steamboat (all the other suits instituted against the said vessel in this district being tried as one suit) commenced in this court on the second day of December, 1868, and such trial and the arguments in said suits was continued from time to time until the seventeenth day of June, 1869, when the same was finally closed.

That on the twentieth day of December, 1869, this court directed decrees to be entered for the libellants in each of the said several suits, with reference to a commissioner to ascertain and report the damages sustained by the several libellants, which said decrees were duly entered.

85 That proceedings were had before the said commissioner upon said reference, who made his report in the said several suits, and the amounts reported by him to be due the several libellants in the suits in this district appear in the said Schedule B, hereunto annexed, and that Schedule C hereunto annexed contains the names of claimants who have instituted proceedings against said steamboat in this district, and which are still pending therein, with the amounts claimed by them respectively, but whose claims have not been reported upon by the said commissioner.

That your petitioners, by their counsel, obtained the consent of the proctors for the several libellants that your petitioners pay the sum of six hundred dollars into court, being the amount of freight pending at the time of the collision and fire in the pleadings in said suits mentioned, and that an order to that effect be entered, which order this court declined to make or to have entered.

That some of the libellants in this court, on the 9th day of March, 1870, made a motion that the libellants be paid in the order in

which their libels were filed, or that in case there is not sufficient to pay the same, that they be paid *pro rata* in the like order, which motion was granted.

That your petitioners, on the 14th day of April, 1870, filed exceptions to the commissioner's report, which exceptions were argued and overruled on the 28th June, 1870.

That your petitioners presented their petition to your honor that the several suits against the said steamboat be referred back to the said commissioner, and that he be directed to take such further testi-
mony as may be offered, and report to this court the total
86 amount of all the claims against said steamboat, and the value of the said steamboat and of her freight pending at the time of the collision and fire in the pleadings mentioned, and obtained an order that all the libellants and parties show cause, on the 22d day of October, 1870, why the prayer thereof should not be granted. That the same was heard before this court and denied, on the ground that such testimony was inadmissible, having been theretofore so adjudged by said court.

And your petitioners further show that in their several answers in the suits in this district, and in other suits against your petitioners and against said steamboat, for the same causes of action as hereinbefore stated, your petitioners set up and insisted that they were entitled to the benefit of the said act of March 3, 1851, above referred to, and up to the time of the making of the rules hereinafter referred to that was the only means in their power of obtaining a restriction of their liability, as provided for in and by said act. That in the suit of William A. Wright and others against your petitioners, above referred to, the Supreme Court of the United States, on an appeal regularly taken to that Court, held and determined that the liability of your petitioners was limited, and ordered and ditected that all proceedings in that cause should be suspended until your petitioners should have time for taking the proper proceedings in this court for apportioning the damages sustained by the various parties who had sustained damages by reason of the collision, fire, and loss above mentioned, and the said court at the same time adopted certain rules to govern the practice in such cases.

Your petitioners further show and respectfully insist, that by rea-
son of the facts and circumstances hereinabove stated, and
87 by reason of the decision of the said Supreme Court of the United States in the said suit of William A. Wright and others against your petitioners, and the rules adopted by the said Supreme Court to govern cases of like character, they are entitled to and they claim the benefit of limitation of liability provided for in the third and fourth sections of the act entitled "An act to limit the liability of ship owners, and for other purposes," passed March 3d, 1851.

Your petitioners therefore pray that this honorable court will, in conformity with the said act of Congress and the decision of the said Supreme Court, and the rules of the said Supreme Court made in pursuance thereof, cause an appraisement to be had

by one of the commissioners of this court of the amount of value of the interest of your petitioners as owners, respectively, in such steamboat or vessel and her freight, pending for the voyage upon which she was employed, and for which your petitioners are liable, and that upon the coming in of the report of the said commissioner an order may be made for the payment of such valuation into court, or for the giving of a stipulation by your petitioners, with sureties for payment thereof into court whenever the same shall be ordered; and upon the payment of such valuation into court, or upon the filing of such stipulation, that the stipulation heretofore given be cancelled, and your petitioners and their sureties thereon be discharged from all liability thereunder.

Your petitioners further pray that this court will issue a monition against all persons and parties claiming damages for any loss, destruction, damages, or injur yarising out of the said collision and fire, citing them to appear before this court and make due proof of their respective claims at or before a certain time to be named
88 in said writ, not less than three months from the issuing of the same, and that public notice of such monition be given, as in other cases, and such further notice given as this court in its discretion may direct.

And your petitioners further pray that your honor will be pleased to make an order restraining the further prosecution of all and any suit or suits against the said steamboat, or against your petitioners as the owners of the said steamboat, in respect to any such claim or claims for damages occasioned by the collision, fire, and loss in the said pleadings mentioned, and restraining all further proceedings, except as to such appraisement, until the further order of the court.

And your petitioners further pray that they may have such further and other order or relief as to this court may seem proper and right, and as this court may think proper to grant.

And they will ever pray, &c.

THE NORWICH AND N. Y. TRANSPORT. CO.,
By JULIUS WEBB, *Gen'l Manager.*

J. W. C. LEVERIDGE,
Proctor for Petitioners.

SOUTHERN DISTRICT OF NEW YORK:

Julius Webb, being duly sworn, says: That he is the general manager and agent of "The Norwich and New York Transportation Company," the above-named petitioners; that the said company is a foreign corporation, incorporated by or under the laws of the State of Connecticut, and their principal place of business is in the
89 city of Norwich, in the said State, and the officers of the said company are now absent from this State, and from the southern and eastern districts of New York; that deponent has heard the above petition read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters deponent believes it to be true.

JULIUS WEBB, *Gen'l Manager.*

Sworn, this 15th day of June, 1872, before me—

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

EXHIBIT A.

Referred to in the annexed petition, showing the names of all parties who have or make any claim against the City of Norwich or her owners, except the owners of the schooner General S. Van Vliet and her cargo.

90 Where from.	Date.	Consignee.	Articles.	Cubic feet.	Weight.
Norwich	April 17, 1866	Platner & Carson	9 bdls. paper		325
Do.	do.	Peterson & Patterson.	1 box	6	
Do.	do.	Campbell, Hall & Co.	126 bdls., 4 cases paper.		12,473
Do.	do.	Taylor & Sons	17 empty bbls.		
Do.	do.	do.	22 do. halfs		
Do.	do.	Loney, Iddings & Co.	4 bales goods	25	
Do.	do.	R. R. Graves	2 cases goods	46	
Do.	do.	Anthony & Hall	4 bales	40	
Do.	do.	Hooker & Co.	10 cases handles	140	
Do.	do.	Austin, Dall & Co.	1 case goods	25	
Do.	do.	Bowers, Beekman & Co.	4 cases goods	100	
Do.	do.	D. W. Hoyt	1 bbl. wheat		200
Do.	do.	Bangs, Maxwell & Co.	4 cases goods	56	
Do.	do.	John T. Pryen	1 bbl. beans		200
Do.	do.	J. E. Wilson	42 bdls. rims	263	
Do.	do.	Lindemeyer Bros.	5 bdls. paper		170
Do.	do.	W. H. Fliteraft & Co.	73 bdls. paper		2,200
Do.	do.	St. Louis Type Foundry.	3 cases paper		920
Do.	do.	F. B. O'Connor	12 bdls. paper		390
91.					
Do.	do.	E. N. Lawrence & Co.	25 boxes	75	
Do.	do.	Pierce & Button	4 cases goods	52	
Do.	do.	Anthony & Hall	1 case goods	13	
Do.	do.	Woodward, Baldwin & Co.	2 cases goods	26	
Norwich	April 17, 1866	Col. Geo. P. Kane	2 machines (boxed)		2,274
Do.	do.	Mellen & Wilcox	1 case	25	
Do.	do.	Manahan & Miller	26 bdls. paper		2,821
Do.	do.	Stokes, Caldwell & Co.	3 cases, 5 bales goods.	95	
Do.	do.	Sargent & Co.	1 box		650
Do.	do.	Bourd & Dean	6 bbls. cranberries		900
Do.	do.	Taylor & Sons	5 empty bbls.		
Do.	do.	do.	1 empty half		
Do.	do.	Hooker & Co.	6 cases handles	84	
Do.	do.	C. D. Culver	25 bdls. twine		250
Do.	do.	J. H. Lester	1 box hats	7	

EXHIBIT A—Continued.

Where from.	Date.	Consignee.	Articles.	Cubic feet.	Weight.
Norwich	April 17, 1866	E. & H. T. Anthony.	1 box	7	
Do.	do.	Israel Holms	1 box	12½	
Do.	do.	Sprague, Cooper & Co.	1 case goods	50	
Do.	do.	Anthony & Hall	11 bales goods	110	
92					
Do.	do.	Sherman & Cole	1 bdl. bags	6	
Do.	do.	Cornell, Willis & Co.	1 box	7	
Do.	do.	Wengbo & Lange	1 box	7	
Danielsonville	do.	Richards & Collins	5 bales goods	50	
Do.	do.	Pierce & Button	4 bales goods	40	
Dayville	do.	Ammidown, Lane & Co.	10 bdls. goods	21	
Thompson	April 16, 1866	W. Harvey	7 bbls. twine	42	
Do.	do.	W. F. Dawley	5 bbls. twine	30	
Do.	do.	Low, Harriman & D.	6 cases woolen goods.	120	
Do.	April 17, 1866	W. F. Dawley	3 bbls. twine	18	
Putnam	April 16, 1866	E. A. Green & Co.	1 bdl. bags		200
Do.	do.	W. H. Magill	1 case goods	22	
Do.	do.	Wheelwright & Co.	5 cases goods	100	
Do.	April 17, 1866	Lonard Grigeneck	5 bbls.		1,000
Do.	do.	W. H. Magill	1 case goods	20	
Webster	April 16, 1866	H. B. Claflin & Co.	3 cases shoes	17	
Do.	do.	Meade & Townsend.	3 cases shoes	18	
Do.	do.	Bell, Wheelock & Co.	2 cases shoes	11	
Do.	do.	Hunt, T. & Co.	5 cases goods	112	
Do.	do.	Sutton, Smith & Co.	18 bdls. linen goods.	126	
93					
Do.	do.	Van Valkenburgh, H. & Co.	9 cases woolen goods.	203	
Do.	do.	Meade, Townsend, & A.	3 cases shoes	11	
Do.	do.	Hall, Southwick & Co.	2 cases shoes	8	
Do.	April 17, 1866	Meade, F. & Andrews.	4 cases shoes	24	
Do.	do.	C. C. Warren	2 cases shoes	10	
Do.	do.	Sutton, Smith & Co.	12 bdls. linen goods.	75	
Do.	do.	Kendell C. Cleveland & Co.	5 cases woolen goods.	112	
No. Oxford	do.	Turnbull, Slade & Co.	6 bales goods	69	
No. Webster	April 16, 1866	Samuel Slater & Sons.	8 cases goods	109	

EXHIBIT A—Continued.

Where from.	Date.	Consignee.	Articles.	Cubic feet.	Weight.
No. Webster	April 17, 1866	Samuel Slater & Sons.	1 case goods	125	
Do.	do.	Samuel Slater & Sons.	7 bales goods		
Do.	do.	Samuel Slater & Sons.	16 cases goods	195	
Worcester	April 16, 1866	J. T. Whitehouse & Co.	7 boxes		420
Do.	do.	Kelley, Taggart & Ford.	1 plate heater		1,700
Do.	do.	Bigelow & Trask	18 cases shoes	102	
Do.	do.	Dale Bros.	6 bales woolen goods.	42	
Do.	do.	Hunt, Tillinghast & Co.	2 cases goods	48	
Do.	do.	Underhill Bros. & Co.	1 case boots and shoes.	8	
Do.	do.	Holt, Laurel & Co.	1 box broken glass.	12½	
Do.	do.	Farnham, G. & Co.	12 bales goods	116	
94					
Do.	do.	Walthern & Co.	4 boxes	59	
Do.	do.	Wilson & Hood	2 cases goods	7	
Do.	do.	E. & H. T. Anthony.	8 cases mdse.		1,000
Do.	do.	Melius, Currier & Co.	1 case boots	7	
Do.	do.	I. Washburn & Moen Wire Works.	6 bdls wire (in 1 pkg.)		315
Do.	do.	Gale & Robingson	2 cases hops	30	
Do.	April 17, 1866	Merwin & Bray	6 boxes rifles		600
Do.	do.	Frazer & Lee	9 bbls. copperas		2,611
Do.	do.	Bell, Wheelock & Co.	2 cases boots	9	300
Do.	do.	Hooker & Co.	1 box hardware		
Do.	do.	J. Q. Prebbles & Co.	3 cases perforated paper.		600
Do.	do.	C. T. Curtis	5 cases goods	115	
Do.	do.	G. W. Smith & Son.	2 cases shoes	11	
Do.	do.	Denny, Jones & Poor.	2 cases woolen goods.	46	
Do.	do.	Danforth, L. & M.	2 boxes	11	
Do.	do.	Olney & Pratt	1 copying press		100
Do.	do.	Hill & Chapman	6 boxes cards		240
Do.	do.	Mrs. L. E. Bingham.	2 boxes Hosford's preparation.	7	
Do.	do.	Willard & Co.	7 boxes hardware		800
Do.	do.	Cooper & Pond	2 boxes		300
95					
Do.	do.	J. S. Horah	9 cases boots	30	
Do.	do.	Bigelow & Trask	26 cases shoes	147	
Do.	do.	G. S. Howes	1 horse		

Exhibit A—Continued.

Where from.	Date.	Consignee.	Articles.	Cubic feet.	Weight.
Worcester	April 17, 1866	Prof. L. E. Smith	1 box, 1 bbl.		310
Do.	April 13, 1866	G. & C. Place	6 pieces machinery		20,000
Do.	April 16, 1866	G. & C. Place	1 lathe bed		
Do.	do.	G. & C. Place	2 boxes parts		6,000
Do.	do.	G. & C. Place	1 box machinery		
Do.	April 17, 1866	George Stock	1 piano (boxed)	60	
Do.	do.	Stanfield, W. & Co.	4 cases goods	92	
Do.	do.	Kendell, Cleveland & Co.	1 case goods	25	
Do.	do.	W. Kline	2 boxes	20	
Do.	do.	Hill & Chapman	4 boxes cards		300
Do.	do.	Chas. Rode	7 packages boxes	75	
Do.	do.	Jordan, Marsh & Co.	1 case goods	24	
Do.	do.	G. & C. Place	1 machine		4,000
Fitchburg	April 16, 1866	Rose, Slayle & Frost.	2 boxes		925
Do.	do.	N. Day	10 bales cloth	100	
Do.	do.	D. Snedeker	6 crates boxes	15	
Do.	do.	Pierce & Button	12 bales cloth	138	
96					
Do.	do.	Bartlett S. Machine Co.	4 boxes		650
Do.	do.	W. W. Sileck & Co.	16 b'dl's reeds		545
Do.	do.	W. W. Sileck & Co.	6 b'dl's rubber		510
Do.	do.	W. Bishop Carr	4 bbls.	24	
Do.	do.	Holmes, Goodwin & Co.	21 boxes chair stock		1,575
Do.	do.	Holmes, Goodwin & Co.	46 boxes chair stock		5,120
Do.	do.	D. P. Clark & Co.	56 cases hats	231	
Do.	do.	C. D. Yale & Co.	1 case machinery	50	
Nashua	April 17, 1866	John H. Haskell	1 cask merchandise	14	
Do.	do.	Care Conant & Young.	2 cases	25	
Do.	do.	A. M. Smith	3 cases hair renewer		200
Do.	do.	Hunt, T., & Co.	8 cases goods	120	
Do.	do.	Hunt, T., & Co.	2 cases goods	32	
Do.	do.	Petrie & Co.	3 cases goods	34	
Do.	do.	I. M. Billings & Co.	3 cases goods	54	
Do.	do.	L. L. & Co.	4 cases goods	38	
Do.	do.	G. Brewer & Co.	35 bales goods	310	
Do.	do.	G. Brewer & Co.	28 bales goods	248	
Do.	do.	D. & R.	48 packages tools		2,950
Do.	do.	Weitusch & Labatt.	19 cases hardware		1,720
97					
Fitchburg	April 14, 1866	Jenkins, Vail & Co.	5 boxes goods	75	
Groton Junc't.	April 17, 1866	Farnham & Doc.	25 barrels apples		3,125
Clinton	do.	Bigelow, C. Co.	26 rolls carpets	163	
Do.	do.	James Farnham	1 roll, 1 case		250

EXHIBIT A—Continued.

Where from.	Date.	Consignee.	Articles.	Cubic feet.	Weight.
Lowell	April 16, 1866	H. V. Butler & Co.	38 bales rope }		25,200
Do.	do.	H. V. Butler & Co.	28 bales waste }		
Do.	April 17, 1866	Gardner, Dexter & Co.	12 cases goods	178	
Do.	do.	Frothingham Co.	25 cases goods	298	
Do.	do.	Jno. R. Hoole	1 machine		675
Do.	do.	Van Valkenburg & Haines.	1 case	33	
Do.	do.	Hill & Chapman	5 boxes merchandise.	29	
Do.	do.	Harrison & Bros.	1 box merchandise		340
Do.	do.	McNish & Butler	9 kegs bolts		1,623
Do.	do.	King & Pennock	2 boxes bobbins	25	
Milford	April 16, 1866	J. Miles & Co.	37 cases straw goods.	100	
Do.	do.	C. B. & Haven	1 brake		125
Westboro	April 13, 1866	S. Buttler	8 cases	42	
Do.	do.	W. Topping & Co.	8 cases	24	
Do.	April 16, 1866	Thomas & Gounke	16 cases	35	
Do.	do.	G. Nathewson & Co.	4 cases	48	
98					
Grafton	April 16, 1866	A. A. Shumway & Co.	4 cases	13	
Millbury	April 16, 1866	M. Meal	9 cases boots	27	
Holliston	April 16, 1866	L. Slocum	18 cases bonnets	50	
Do.	do.	Kraft & Hill	4 cases bonnets	15	
Framingham	April 16, 1866	Hall & Southwick	1 case shoes	14	
Do.	do.	C. P. Sanger	4 cases shoes	92	
Do.	do.	N. A. Baldwin & Co.	19 cases bonnets	65	
Do.	do.	A. Richardson	10 cases bonnets	30	
Do.	do.	G. Richardson & Son.	13 cases bonnets	30	
Do.	do.	H. D. Chipperly & Co.	7 cases bonnets	26	
Do.	do.	Williams & Whittlesy.	39 cases bonnets	143	
Saxonville	April 14, 1866	Wim & Weaver	2 bales worsted		800
Newton Corner	April 14, 1866	B. E. Clark & Co.	348 paper bags		20,900
Natick	April 14, 1866	G. P. & B. W. Fay	13 cases hats	91	
Do.	do.	C. C. Warren	9 cases shoes	65	
Do.	do.	J. Wiggins & Son	3 cases shoes	23	
Do.	do.	French, Powell & Co.	6 cases shoes	42	
Do.	do.	J. B. Purdy	1 case merchandise	12	
Do.	April 16, 1866	G. P. & B. W. Fay	14 cases hats	98	
Do.	do.	C. C. Warren	8 cases shoes	48	
99					
Do.	do.	French, Powell & Co.	2 cases shoes	14	
Do.	do.	J. Wiggins & Son	1 case shoes	6	
Do.	do.	R. Foulds	1 case merchandise	30	
Do.	do.	A. A. Shumway	3 cases shoes	22	

EXHIBIT A—Continued.

Where from.	Date.	Consignee.	Articles.	Cubic feet.	Weight.
New London Northern Railroad:					
So. Windham	April 17, 1866	American Hard Rubber Co.	4 boxes		4,600
Brookfield	April 17, 1866	B. W. & Co.	3 cases shoes		150
East Brookfield	April 17, 1866	C. C. Warren	22 cases shoes		2,500
Do.	do.	C. C. Warren	7 cases shoes		1,000
Do.	do.	R. M. Green	38 bundles sieves		1,100
Do.	do.	J. H. Baulder	1 case		100
Palmer	April 17, 1866	J. Erbus & Co.	1 case		25
Do.	do.	Smedley Bros.	8 cases	10	
Do.	do.	C. Miles	22 cases	51	
Do.	do.	J. Goodwin	31 bundles paper		4,100
Do.	do.	Stokes, Caldwell & Co.	2 cases	44	
Do.	do.	W. H. P. & Bros.	27 rolls paper		2,036
Do.	do.	W. H. P. & Bros.	27 rolls paper		2,046
Do.	do.	Russell & E. M. Co.	3 boxes machinery		3,000
Stafford	April 17, 1866	Stanfield, W. & Co.	8 cases goods		4,000
100					
Do.	do.	Lane, Son & Co.	2 bundles bags		150
Do.	do.	C. Hemmingway	1 bundle wool sacks.		200
Do.	do.	L. H. Browne	5 bales c. yarn		500
Do.	do.	Coffin & Altemus	5 cases goods		3,000
Merrow	April 17, 1866	W. Heller & Co.	2 cases stockings	68	
Tolland & Will	April 17, 1866	Henry Young	2 barrels potatoes		330
So. Coventry	April 17, 1866	W. W. Huntington.	2 cases goods	42	
Do.	do.	Henry Falson & Co.	2 cases cartridges		500
Do.	do.	Uhl & Gihon	8 cases goods	200	
Willimantic	April 17, 1866	Hall & Vesin	2 bales yarn		352
Do.	do.	[M] 101 Chambers street.	34 cases thread		1,953
Do.	do.	S. Goddard	59 bundles paper		2,288
Do.	do.	S. Goddard	10 rolls paper		
Do.	do.	J. Lea & Co.	10 bales goods	112	
Do.	do.	[P]x 28 Warren street	13 cases thread		900
Do.	do.	W. D. Mangam	1 barrel bags		200
Do.	do.	Walsh, Coulter & Co.	2 boxes handles		650
So. Monson	April 17, 1866	Stokes, Caldwell & Co.	10 cases woolen goods.	230	
Monson	April 17, 1866	W. H. Stiger & Co.	2 bundles bags		150
Do.	do.	John Slade & Co.	2 cases goods	48	
101					
Do.	do.	Denny, Jones & Poor.	1 case goods	24	
Do.	do.	H. H. & Co.	31 cases straw goods.	95	

EXHIBIT A—Continued.

Where from.	Date.	Consignee.	Articles.	Cubic feet.	Weight.
Monson	April 17, 1866	Armstrong, Carleton & Co.	17 cases straw goods.	17	
Do.	do.	H. H. & Co.	25 cases straw goods.	72	
Boston	April 16, 1866	H. Newman	2 cases goods	21	
Do.	do.	Marston & Hays	1 case goods	6	
Do.	do.	Gardner, Brewer & Co.	5 bales, 2 cases	70	
Do.	do.	Marston & Hays	4 cases goods	20	
Do.	do.	J. S. Barry & Co.	6 bales goods	33	
Do.	do.	C. Amory & Co.	2 cases goods	20	
Do.	do.	J. C. Howe & Co.	8 cases goods	96	
Do.	do.	J. M. Beebe & Co.	16 cases goods	256	
Do.	do.	White, Sheffield & Co.	5 bales rags		3,420
Do.	do.	H. B. Claflin & Co.	6 cases shoes	25	
Do.	do.	E. S. Jaffray & Co.	2 cases goods	22	
Do.	do.	Wheelwright & Co.	1 case goods	18	
Do.	do.	Stone, Bliss, Fay & Allen.	4 cases goods	74	
Boston	April 16, 1866	J. H. Diggles & Co.	4 cases goods	78	
Do.	do.	Newell Bros.	2 cases shoes	8	
Do.	do.	J. S. Barry & Co.	6 cases goods	72	
102					
Do.	do.	John S. Thornton	2 cases merchandise.	25	
Do.	do.	Howes, Hyatt & Company.	6 cases shoes	18	
Do.	do.	F. De La Vega	15 cases machinery		5,175
Do.	do.	F. Skinner & Co.	81 cases and bales of goods.	690	
Do.	do.	J. H. Converse, B. & Co.	2 cases goods	24	
Do.	do.	Grover & Baker Sewing Machine Co.	1 case merchandise.	4	
Do.	do.	Rotchchilds Bros.	3 cases shoes	65	

103 SCHEDULE B.

Referred to in the annexed petition, showing the amounts reported by the commissioner to be due libellants.

George Place and Charles Place *vs.* The Steamboat City of Norwich, &c. H. C. Place, proc. for libel'ts. Libellants' claim, $8,000. Amount reported due libellants, March 2, 1870, $9,977.80.

Richard L. Campbell and others *vs.* The Same. Martin and Smith, proc. for libel'ts. Libellants' claim, $3,181.30. Amount reported due libellants, March 2, 1870, $4,043.60.

The Salisbury Mills *vs.* The Same. Martin & Smith, proc. for libel'ts. Libellants' claim, $5,342.24. Amount reported due libellants, March 3, 1870, $6,106.82.

104 The Stark Mills *vs.* The Same. Martin & Smith, proc. for libel'ts. Libellants' claim, $6,461.80. Amount reported due libellants, March 3, 1870, $8,018.69.

The Amoskeag Manuf'g Co. *vs.* The Same. Martin & Smith, proc. for libel'ts. Libellants' claim, $9,986.86. Amount reported due libellants, March 3, 1870, $11,708.17.

James M. Beebe and others *vs.* The Same. Martin & Smith, proc. for libel'ts. Libellants' claim, $1,442.72. Amount reported due libellants, March 3, 1870, $1,835.33.

The Bigelow Carpet Co. *vs.* The Same. Alex. McCue, proc. for libel'ts. Libellants' claims, $4,026.30. Amount reported due libellants, March 8, 1870, $5,120.78.

105 The Willimantic Linen Co. *vs.* The Same. Dimmick & Perry, proc. for libel'ts. Libellants' claim, $4,173.40. Amount reported due libellants, March 8, 1870, $4,777.08.

The Merrick Thread Co. *vs.* The Same. Gratz Nathan, proc. for libel'ts. Libellants' claim, $1,207.08. Amount reported due libellants, April 14, 1870, $1,624.71.

The Monson Woolen Manufacturing Company *vs.* The Same. P. S. Crooke, proc. for libel'ts. Libellants' claim, $1,623.94. Amount reported due libellants, March 3, 1870, $2,064.35.

The Hampden Cotton Manufacturing Company *rs.* The Same. P. S. Crooke, proc. for libel'ts. Libellants' claim, $4,834.69. Amount reported due libellants, March 8, 1870, $6,148.92.

106 Francis M. Bardwell *vs.* The Same. P. S. Crooke, proc. for libel'ts. Libellant's claim, $805.70. Amount reported due libellant, March 8, 1870, $1,024.70.

Alexander Bigelow and George Barbour *vs.* The Same. P. S. Crooke, proc. for libel'ts. Libellants' claim, $569.94. Amount reported due libellants, March 3, 1870, $724.54.

James M. Mead, Manton E. Townsend, and Joseph Andrews *vs.* The Same. B. F. Watson, proc. for libel'ts. Libellants' claim, $1,025.18. Amount reported due libellants, $1,303.53.

Charles D. Bigelow and George L. Trask *vs.* The Same. Kittridge & Rice, proc. for libel'ts. Libellants' claim, $4,400. Amount reported due libellants, March 8, 1870, $4,852.04.

107 Eliab A. Converse *vs.* The Same. A. L. Edwards, pr. for lib't. Lib'nt's claim, $3,337.77. Am't reported due libellant, April 14, 1870, $4,027.40.

Seth B. Hunt and others *vs.* The Same. Brown, Hall & Vanderpoel, pr. for lib'ts. Lib'nts' claim, $5,634.68. Am't reported due libellants, Mar. 8, 1870, $6,999.82.

Smithville Manufacturing Co. *vs.* The Same. A. L. Edwards, for libellant. Am't of claim, $2,130.63. Am't reported due libellants, April 14, 1870, $2,725.28.

George Place and others *vs.* The Same. E. L. Owen, for petiti'ner. Petition of Jn. and William Slater. Am't of claim, $3,564.20.

Amount reported due petitioners, with interest, June 27, 1870, $4,609.99.

108 The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of C. & C. G. Winchester. Am't of claim, $1,354.50. Amount reported due petitioners, with interest, June 27, 1870, $1,751.93.

The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of Ch. Miles & Co. Am't of claim, $2,054. Amount reported due petitioner, with interest, June 15, 1870, $2,663.86.

The Converseville Manufacturing Company of Stafford, Tolland Co., Connecticut, *vs.* The Same. A. L. Edwards, pr. for lib'ts. Am't of claim, $2,028. Amount reported due libellants, with interest, June 27, 1870, $2,623.04.

George Place and others *vs.* The Same. Peter B. Olney, pr. for petitioners. Am't of claim, $4,592.50. Amount reported due Nelson D. White, June 29, 1870, $6,038.42.

109 SCHEDULE C.

Referred to in the annexed petition, showing the amounts claimed by parties which have not been reported upon by the commissioner.

George Place and others *vs.* The Steamboat City of Norwich, &c. E. L. Owen, for petitio'er. Petition of Horatio W. Slater and others. Amount of claim, $8,807.00.

The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of Horatio N. Slater and others. Amount of claim, $8,597.44.

The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of Oscar F. Chase and others. Amount of claim, $5,296.44.

110 The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of H. C. Sales & Co. Amount of claim, $4,210.69.

The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of Ch. H. Kenyon & Co. Amount of claim, $4,982.51.

The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of Ch. Osgood & Co. Amount of claim, $1,800.00.

The Same *vs.* The Same. E. L. Owen, for petitio'er. Petition of Leonard M. Hills & Son. Amount of claim, $414.00.

111 The Same *vs.* The Same. E. L. Owen, for petitioner. Petition of Smedley Bros. Amount of claim, $165.

The Same *vs.* The Same. E. L. Owen, for petitioner. Petit'n of The Shetucket Co. Amount of claim, $1,619.

The Same *vs.* The Same. E. L. Owen, for petitioner. Petition of The Whitestone Co. Amount of claim, $3,778.86.

The Same *vs.* The Same. E. L. Owen, for petitioner. Petition of Hall, Southwick & Co. Amount of claim, $1,492.20.

112 The Same *vs.* The Same. E. L. Owen, for petitioner. Petition of John & Even Wright & Co. Amount of claim, $1,974.12.

Henry T. Jenkins & others *vs.* The Same. A. L. Edwards, proctor for libellants. Amount of libellants' claim, $3,326.95.

SCHEDULE D.

Referred to in the annexed petition, showing the aggregate amount of the damages reported by the commissioner as due libellants in suits and proceedings in this district, as is stated in Schedule B, hereto annexed.

Place and others	$9,977 80
Campbell and others	4,043 60
Salisbury Mills	6,106 82
Stark Mills	8,018 69
Amoskeag Manufacturing Company	11,708 17
Beebe and others	1,835 33
Bigelow Carpet Company	5,120 78
Willimantic Linen Company	4,777 08
Merrick Thread Company	1,624 71
Monson Woolen Manufacturing Co.	2,064 35
Hampden Cotton Manufacturing Co.	6,148 92
Bardwell	1,024 70
113 Bigelow & Barbour	724 54
Mead and others	1,303 35
Bigelow and Trask	4,852 04
Converse	4,027 40
Hunt and others	6,999 82
Smithville Manufacturing Company	2,725 28
J. & W. Slater	4,609 99
Winchester and others	1,751 93
Miles & Co.	2,663 86
Converseville Manufacturing Company	2,623 04
Nelson D. White	6,038 42
	$100,770 62

SCHEDULE E.

Referred to in the annexed petition, showing the aggregate amount of claims which have not been proved in suits and proceedings in this district, as stated in Schedule C hereunto annexed.

Slater and others	$8,807 00
Do.	8,597 44
Chase and others	5,296 44
Sales & Co.	4,210 69
Kenyon & Co.	4,982 51
Osgood & Co.	1,800 00
Hills & Son	414 00
Smedley Brothers	165 00
Shetucket Company	1,619 00
Whitestone Company	3,778 86
Hall, Southwick & Co.	1,492 20
Wright & Co.	1,974 12
Jenkins and others	3,326 95
	$46,464 21

Endorsed: Petition for limitation of liability. Filed June 13th, 1872.

114 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 19th day of July, in the year of our Lord one thousand eight hundred and seventy-two.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH & NEW YORK TRANSPORTATION COMPANY.

On reading and filing the petition of The Norwich & New York Transportation Company, the owners and claimants of the steamboat City of Norwich, her engine, tackle, apparel, and furniture, setting forth, among other things, that by reason of the facts and circumstances stated in said petition, and by reason of the decision of the Supreme Court of the United States, in the suit against them therein mentioned, and the rules adopted by the said Supreme Court to govern cases of like character, they are entitled to and claim the benefit of limitation of liability provided for in the third and fourth sections of the act entitled "An act to limit the liability of ship owners, and for other purposes," passed March 3, 1851, and praying that this court will cause an appraisement to be had, by one of the commissioners of this court, of the amount of value of the interest of the said petitioners as owners respectively in such steamboat or vessel, and her freight pending for the voyage upon which
115 she was employed, and for which the said petitioners are liable, and that upon the coming in of the report of the said commissioners, an order may be made for the payment of such valuation into court, or for the giving of a stipulation by the said petitioners with sureties for the payment thereof into court, whenever the same shall be ordered, and that upon the payment of such valuation into court, or upon the filing of such stipulation, that the stipulation heretofore given by the said petitioners be cancelled, and the said petitioners and their sureties thereon be discharged from all liability thereunder, and that the court will issue a monition against all persons and parties claiming damages for any loss, destruction, damage, or injury arising out of the said collision, fire, and loss, citing them to appear before this court and make due proof of their respective claims, at or before a certain time to be named in said writ, not less than three months from the issuing of the same, and that public notice of such monition be given as in other cases, and such further notice as this court in its discretion may direct, and that this court will make an order restraining the further prosecution of all and any suit or suits against the said steamboat, or against the said petitioners as the owners of the said steamboat, in respect to any such claim or claims for damages occasioned by the collision, fire, and loss in the said petition mentioned, and restraining all further proceedings, except as to such appraisement, until the further order of this court, and for such further and other order or relief as to this court may

seem proper and right, and as this court may think proper to grant.

Now, on motion of J. W. C. Leveridge, of counsel for said petitioners, it is ordered that, in conformity with the said act of Congress, the said decision of the said Supreme Court, and the rules of the said Supreme Court made in pursuance thereof, that all
116 persons and parties interested show cause before this court, at the court-rooms thereof, at No. 189 Montague street, in the city of Brooklyn and State of New York, on the third Wednesday of November, 1872, at 12 o'clock noon on that day, or as soon thereafter as counsel can be heard, why an appraisement should not be made of the amount of the value of the interest of said petitioners, as owners, respectively, in said steamboat, City of Norwich, and her freight pending for the said voyage upon which she was employed, and why the petitioners should not have such other, further, or different relief or order in the premises as may seem meet and proper, and in the meantime, and until otherwise ordered by this court, the further prosecution of all or any suits against the said petitioners, as owners of said steamboat, for or on account of any of the matters in the petition mentioned and referred to, are hereby restrained and stayed.

And on like motion it is further ordered, that the clerk of this court give notice of this order to all persons interested by publishing a copy thereof in the Brooklyn Daily Union, the New York Daily Times, and in the Norwich Bulletin for fourteen days prior to the return of such order, by mailing copies thereof to all parties interested named in petition and schedules annexed, or whose names may hereafter be furnished to him, addressed to them at their respective places of business or residence, so far as he may ascertain the same, and as to parties whose places of business or residence may not be ascertained, the same to be addressed to them at the city of New York, and by serving, or causing to be served, a copy of the order on the proctors or attorneys of all parties named in the petition, as having commenced legal proceedings for the enforcement of their claims.

CHARLES L. BENEDICT.

J. W. C. LEVERIDGE,
Proctor for Petitioners.

117 Let the publication of the written order in the New York Daily Times be limited to three consecutive days, fourteen days prior to the return of said order.

Dated October 17th, 1872.

CHARLES L. BENEDICT.

Endorsed: Order for publication. Filed and entered July 19th, 1872.

At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 5th day of March,

in the year of our Lord one thousand eight hundred and seventy-three.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH & NEW YORK TRANSPORTATION COMPANY.

The Norwich & New York Transportation Company, the owners and claimants of the steamboat City of Norwich, her engine, tackle, apparel, and furniture, having heretofore presented their petition to this court, duly verified, setting forth, among other things, that by reason of the facts and circumstances stated in said petition,
118 and by reason of the decision of the Supreme Court of the United States in the suit against them therein mentioned and the rules adopted by the said Supreme Court to govern cases of like character, they are entitled to, and claim the benefit of limitation of liability provided for in the third and fourth sections of the act, entitled "An act to limit the liability of ship owners and for other purposes," passed March 3, 1851, and praying among other things that this court will cause an appraisement to be had by one of the commissioners of this court of the amount of value of the interest of the said petitioners as owners respectively in such steamboat or vessel, and her freight pending for the voyage upon which she was employed, and for which the said petitioners are liable, and that upon the coming in of the report of the said commissioner, an order may be made for the payment of such valuation into court, or for the giving of a stipulation by the said petitioners with sureties for the payment thereof into court, whenever the same shall be ordered, and that upon the payment of such valuation into court or upon the filing of such stipulation, that the stipulation heretofore given by the said petitioners be cancelled, and the said petitioners and their sureties thereon be discharged from all liability thereunder, and that this court will issue a monition against all persons and parties claiming damages for any loss, destruction, damage, or injury arising out of the said collision, fire and loss, citing them to appear before this court and make due proof of their respective claims, at or before a certain time to be named in said writ, not less than three months from the issuing of the same, and that public notice of such monition be given as in other cases, and such further notice as this court in its discretion may direct, and that this court will make an order restraining the further prosecution of all and any suit or suits against the said steamboat, or against the said petitioners
119 as the owners of the said steamboat in respect to any such claim or claims for damages occasioned by the collision, fire, and loss in the said petition mentioned, and restraining all further proceeding except as to such appraisement, until the further order of this court, and for such further and other order or relief as to this court may seem proper and right, and as this court may think proper to grant; upon the filing of which said petition, an order was heretofore made requiring all persons and parties interested to show cause, before this court, at the court rooms thereof at No. 189 Mont-

ague street, in the city of Brooklyn and State of New York, on the third Wednesday of November, 1872, at 12 o'clock noon on that day, or as soon thereafter as counsel could be heard, why an appraisement should not be made of the amount of the value of the interest of the said petitioners as owners respectively in said steamboat City of Norwich and her freight, pending for the said voyage upon which she was employed, and why the petitioners should not have such other further or different relief or order in the premises as may seem meet and proper; and in the meantime, and until otherwise ordered by this court, the further prosecution of all or any suit or suits against the said petitioners as owners of said steamboat, for or on account of any of the matters in the petition mentioned and referred to, were thereby restrained and stayed, and that due notice be given by the clerk of this court to all persons interested, in the manner and for the period specified in said order; and the said matter coming on to be heard, and after hearing the counsel of the said petitioners, and Messrs. Ingersoll, Place & Huntley in opposition thereto, and due deliberation being thereupon had, it is, on motion of the said counsel of the said petitioners, ordered that an appraisement be had by Samuel T. Jones, one of the commissioners of this court, of the amount of value of the interest of the said petitioners as owners respectively in such steamboat or vessel and her freight, pending for the voyage upon which she was employed, and for which the said petitioners are liable; and that upon the coming in and confirmation of the report of the said commissioner, an order be made for the payment of such valuation into court, or for the giving of a stipulation by the said petitioners, with sureties, for the payment thereof into court, whenever the same shall be ordered. And it is further ordered that the further prosecution of all and any suit or suits against the said steamboat or against the said petitioners, as the owners of the said steamboat, in respect to any such claim or claims for advantages occasioned by the collision, fire, and loss in the said petition mentioned, and all further proceedings, except as to such appraisement, be, and the same are hereby, restrained until the further order of this court.

CHAS. L. BENEDICT.

Please to take notice that an order, of which the within is a copy, will be presented for settlement to the Hon. Charles L. Benedict, judge of the district court for the eastern district of New York, at his chambers, Montague street, Brooklyn, on the 24th day of February, instant, at eleven o'clock a. m. of that day.

Dated February 20, 1873.

Yours, &c., J. W. C. LEVERIDGE,
Pr. for Petitioners.

To—

R. H. Huntley, Esq.,
Pr. for William A. Wright and others.
Martin & Smith, Esqs.,
Pr's for Richard L. Campbell and others.

R. W. Townsend, Esq.,
Pr. for James H. Diggles and others.
H. C. Place, Esq.,
Pr. for Charles Place and another.

Endorsed: Order for appraisement. Filed and entered the 5th day of March, 1873.

121 *Notice of Reference.*

District Court of the United States for the Eastern District of New York. In Admiralty.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me (a commissioner duly appointed by the circuit court of the United States for the eastern district of New York, under and by virtue of the acts of Congress in such cases made and provided), at my office at the United States court buildings, corner of Clinton and Montague streets, in the city of Brooklyn, on the 24th day of April, 1873, at 11 o'clock in the forenoon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated Brooklyn, the 17th day of April, A. D. 1873.

Yours, &c., SAMUEL T. JONES,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Eastern District of New York, in the Second Circuit.

To—
H. C. Place, Esq.,
Pr. for George Place & or.
122 Martin & Smith, Esqs.,
Prs. for Richard L. Campbell & ors., and for libellants in other suits.
Alexander McCue, Esq.,
Pr. for the Bigelow Carpet Co.
Dimmick & Perry, Esqs.,
Prs. for the Willimantic Linen Co.
Gratz Nathan, Esq.,
Pr. for the Merrick Thread Co.
P. S. Crooke, Esq.,
Pr. for the Monson Woolen Manufacturing Co., and for libellants in other suits.
B. F. Watson, Esq.,
Pr. for James M. Mead & ors.
Kittridge & Rice, Esqs.,
Prs. for Charles D. Bigelow & ors.
A. L. Edward, Esq.,
Pr. for Eliab A. Converse, and for libellants in other suits.

Brown, Hall & Vanderpoel, Esqs.,
Prs. for Seth B. Hunt & ors.
E. L. Owen, Esq.,
Pr. for Horatio W. Slater and others, and for libellants in other suits.
Peter B. Olney, Esq.,
Pr. for Nelson D. White.
R. H. Huntley, Esq.,
Pr. for William A. Wright and others.
R. W. Townsend, Esq.,
Pr. for defendant, James H. Diggles, and others.
D. C. Winslow, Esq.,
Pr. for J. T. Whitehouse.
Whitney & Betts, Esqs.,
Prs. for Grover & Baker Sewing Machine Co.

123 We hereby admit due and sufficient service of a notice of reference, of which the annexed is a copy, for the libellants and parties for whom we appear in the within entitled action.
April 18, 1873.

H. C. PLACE,
Pr. for George Place & or.
MARTIN & SMITH,
Prs. for Richard L. Campbell & ors.
A. McCUE,
Pr. for the Bigelow Carpet Co.
GRATZ NATHAN,
Pr. for the Merrick Thread Co.
PHILIP S. CROOKE,
Pr. for the Monson Woolen Man. Co. & ors.
KITTRIDGE & RICE,
Prs. for Charles D. Bigelow & ors.
ALFRED L. EDWARDS,
Pr. for Eliab A. Converse & ors.
BROWN, HALL & VANDERPOEL,
Prs. for Seth B. Hunt & ors.
EDWARD L. OWEN,
Pr. for Horatio W. Slater & ors.
PETER B. OLNEY,
Pr. for Nelson D. White.
RICHARD H. HUNTLEY,
Pr. for William A. Wright & ors.
D. C. WINSLOW,
Pr. for J. T. Whitehouse.
WHITNEY & BETTS,
Pr. for Grover & Baker Sewing M. Co.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

124 George S. Scofield, Junior, residing in said district, being duly sworn, says that on the nineteenth day of April, instant, in said district, he served a notice of reference, of which a

duplicate copy is hereunto annexed, on B. F. Watson, Esq., proctor for James M. Mead and others in the within entitled action, by leaving the same with a clerk in the office of the said B. F. Watson, said Watson being absent from said office; and that on the twenty-first day of said April, instant, in said district, he also served a notice of reference, of which a duplicate copy is hereto annexed, on Dimmick & Perry, Esqs., for the Willimantic Linen Company in said within entitled matter, by leaving the same with a clerk in the office of the said Dimmick & Perry, the said Dimmick and Perry being absent from their said office; and that on the said twenty-first day of April, instant, in said district, he also served a notice of reference, of which a duplicate copy is hereto annexed, on R. W. Townsend, proctor for James H. Diggles and others, by leaving the same with the said R. W. Townsend, Esq., in person.

And further deponent says not.

GEO. S. SCOFIELD, JR.

Sworn, this 23d day of April, 1873, before me—

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of New York.

Endorsed: Notice of reference. Filed with me April 30th, 1873.

125 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 4th day of February, in the year of our Lord one thousand eight hundred and seventy-four.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY,

The reference in the above-entitled matter being on hearing before Samuel T. Jones, Esquire, one of the commissioners of this court, under the order entered herein, on the fifth day of March, 1873, and the said Samuel T. Jones having departed this life while said reference was pending undetermined before him:

It is hereby ordered that the said reference proceed, and be continued under said order of reference, before E. B. Husted, Esq., who is hereby appointed a commissioner herein for that purpose.

And it is further ordered that the evidence heretofore taken upon said reference by the said Samuel T. Jones, as such commissioner, stand and be taken and received as evidence already taken in this matter.

CHAS. L. BENEDICT.

Endorsed: Order substituting commissioner. Filed and entered February 4th, 1874.

126 *Commissioner's Report.*

United States District Court, Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

In pursuance of a decretal order of reference made and entered in the above-entitled cause, by which it was referred to the undersigned to continue the reference herein—said reference having been commenced before a former commissioner—and report thereon to the court, I, Edwin B. Husted, commissioner, to whom the matter was referred, do respectfully report:

That I have been attended on such reference by various proctors, whose appearances are fully noted in the minutes of the testimony hereto annexed, and have taken all the proofs offered before me, which, together with those taken before the former commissioner, are hereto annexed.

In ascertaining the value of the steamboat City of Norwich, as directed by the order of reference herein, I have followed what I understood to have been the decision of the Supreme Court of the United States in the case of Wright against the owners of this boat, (13 Wall., 104,) and have ascertained her value in the situa-
127 tion and condition she was in after the collision, and before she was raised, and I find from the testimony taken before me that she was at that time of the value of $2,500. I have arrived at such value by taking the testimony as to her value in New York after she was raised by her owners and brought there, which shows that she was then and there worth the sum of $25,000, and I have deducted from that amount the sum of $22,500, being the sum which, according to the testimony, it had actually cost to raise her and bring her to New York, which leaves $2,500 to be her value, as I have above stated.

All of which is respectfully submitted.

Dated January 6, '75.

EDWIN B. HUSTED,
Commissioner.

Endorsed: Presented to the court, filed, and confirmed *nisi* fourteen days, January 6, 1875.

District Court of the United States for the Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

The libellants, William A. Wright and others, owners of the schooner Van Vliet and cargo, object to the proceedings now being taken, on the grounds—

128 First. That the act of March 3d, 1851, limiting the liability of ship owners does not apply to corporations, and has no

application to this case, and that the petitioner cannot avail itself of the protection intended to be afforded by said act.

Second. That the steamboat City of Norwich having already been appraised, this court has no jurisdiction to make further appraisement.

Third. That the only jurisdiction this court has or can have in the premises is conferred by the bond already given to relieve said steamboat, and that such jurisdiction does not extend to this proceeding.

Fourth. That the petitioner has not furnished any evidence or proofs which will authorize it to invoke the protection of said act of March 3, 1851, even if that act was applicable to this case.

R. H. HUNTLEY,
Proctor for Wm. A. Wright and others, Libellants,

Exh. A. May 21, 1873.

S. T. JONES,
U. S. Commissioner.

129 U. S. District Court, Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

Proceedings before Samuel T. Jones, U. S. commissioner, under and in pursuance of an order of reference made and entered in the above-entitled matter on the 5th day of March, 1873.

April 17, 1873. Mr. Leveridge appears and produces order of reference. On his motion, hearing ordered thereon to be had before the commissioner at the U. S. court-house, corner of Montague and Clinton streets, in the city of Brooklyn, on the 24th day of April, 1873, at 11 a. m. Notice of reference issued to be served on the parties in interest.

April 24, 1873. Mr. Leveridge appears for the petitioners and produces notice of reference, with proof of service; same filed with commissioner; Mr. Donohue also appears as counsel for petitioners.

The following appearances are entered on behalf of parties having claims against the petitioners and the steamboat City of Norwich, arising out of the collision and loss in the petition referred to, viz.:

H. C. Place, for George Place and Charles Place.
Martin & Smith, for Richard L. Campbell and others, and for libellants in other causes against the steamboat.
130 P. S. Crooke, for The Monson Woolen Manufacturing Co., and libellants for three other causes against the steamboat.
Brown, Hall & Vanderpoel, for Seth B. Hunt and others.
R. H. Huntley, for William A. Wright and others.
Whitney & Betts, for Grover & Baker Sewing Machine Co.
Alexander McCue, for the Bigelow Carpet Co.

Counsel for petitioners reads order of reference.
Further hearing adjourned to April 30, 1873, at 10 a. m.

APRIL 30th, 1873.

Mr. Leveridge and Mr. Donohue appear for petitioners and apply for adjournment; adjourned by consent of counsel to May 14, 1873, at 1 p. m.

MAY 14, 1873.

Hearing resumed.

Mr. Leveridge and Donohue for petitioners.

Mr. Place and others for other parties.

Application on behalf of Mr. Huntley for adjournment on the ground of actual engagement of Mr. Huntly on trial of cause in N. Y. common pleas.

Mr. Place objects and insists that hearing proceed.

131 Counsel for petitioner appear and state that they have one witness present, but that in regular order of proof another witness now absent should be first examined, and the attendance of that witness could not be procured.

The commissioner rules that any parties present having testimony to offer may proceed to offer such testimony; that in the absence of any person proceeding with his testimony the reference must stand adjourned; Mr. Place excepts to the ruling.

Counsel for petitioners ask that adjournment be had until May 21, 1873, at 11 a. m. Mr. Place insists that if adjournment be granted it be to 17 May, at 11 a. m.

On behalf of Mr. Huntley, Wednesday, 21st May, is agreed to as an accepted day.

Adjourned to May 21, 1873, at 11 a. m.

MAY 21, 1873.

Pursuant to adjournment the hearing resumed.

Appearances: Messrs. Donohue & Leveridge, for petitioners, Messrs. Huntley, Place, McCue, Crook and Barlow and Olney.

Mr. Huntley presents written objections, which are filed with the commissioner and marked Exhibit A, May 21, 1873.

Messrs. Place, McCue & Crook join in the objections presented by Mr. Huntley.

The commissioner overrules the objections, and counsel for creditors except.

132 *Evidence for Petitioners.*

ISRAEL J. MERRITT, being sworn and examined, says:

I reside at Whitestone, Long Island; my business is wrecking; I have followed that about thirty years.

Q. Did you ever see or have anything to do with the steamer City of Norwich?

A. Yes, sir.

Q. When and where was the City of Norwich when you first had anything to do with her or for her?

A. She was as near in the middle of Long Island Sound, as near as I could place her abreast of Lloyd's Harbor, between Lloyd's Neck and Eaton's Neck; she was on the bottom; bottom upwards

in twenty fathoms of water—about thirty-six feet of her forward end into the mud. This was on or about 25 April, 1866, when we found her—some several days after she collided and sunk.

Q. What did you do with her?

Objected to by creditors, on the ground that whatever was done with the steamer after the collision is immaterial; also that the time of the enquiry is too remote; taken subject to objection.

A. I commenced about two hours after the report came to New York of the disaster, making preparations to save the steamer City of Norwich—I will not be positive whether it was the same day or the next day when I started to seek for her—I was steady sweeping for her every day, until I found her—there was a lapse then, of about forty-eight hours, until the proper tools could be got there to commence operations—then there was a continuous effort to raise her until she was raised, turned over right side up, and brought to Greenpoint, where I made her fast. I think I took her to no
133 particular yard at Greenpoint, but that I run her into the mouth of Bushwick creek, where I kept her.

Q. What was her condition?

Same objection; same ruling.

A. To answer it short, we should term it a bad wreck. In doing this work I acted for the Coast Wrecking Company.

Q. What did it cost to raise her and place her at Greenpoint?

Objected to as before, and also as incompetent; taken subject to objection.

A. From thirty to fifty per cent., more than we received for doing the work.

Q. How much did you get for getting her up?

Objected to, as irrelevant and incompetent; same ruling; same objection and same rulings continued to subsequent questions until further notice.

A. Twenty-two thousand five hundred dollars.

Q. How long were you at the work?

A. About four months, from commencement of work until she was taken to Greenpoint.

Q. What was the work that you done in getting her up and placing her at Greenpoint worth?

A. It was worth, at the lowest, $50,000.

Adjourned to May 27, 1873, at 2 p. m.

134 MAY 27th, 1873.

Hearing resumed.

Appearances: J. W. C. Leveridge, for petitioners; H. C. Place, for George Place and Charles Place; R. H. Huntley, for Wm. A. Wright and others.

JOHN ENGLIS, sworn for petitioners, and examined as follows:

Q. Where do you reside?

A. I reside in Brooklyn; Greenpoint they call it, I suppose.
Q. What is your business?
A. A shipbuilder.
Q. How long have you been engaged in shipbuilding?
A. Forty years or more.
Q. Engaged in building steamboats and steamships?
A. Yes, sir.
Q. Do you know the steamboat City of Norwich?
A. Yes, sir.
Q. Did you know her in April, 1866?
A. Yes, sir.
Q. At the time she was damaged by the collision in Long Island Sound?
A. Yes, sir.
Q. Where did you see her at that time in April, 1866?
A. Why don't you ask me if I seen her after she was got up?
Q. Did you see her after she was raised?
A. Yes, sir.
Q. Where did you see her?
A. I saw her up to Bushwick creek, at Greenpoint or Brooklyn.
Q. You mean after she was raised from Long Island Sound after the collision?
A. Yes, sir; they hauled her in there to keep her from sinking; they had a steam pump in her, and if that had given out she would have sunk.
Q. What was her condition at that time?
A. Very bad.

Same objection and ruling as heretofore.

135 Q. Did you go on board of her?
A. Yes, sir.
Q. What was there left of her?

Same objection and ruling as heretofore.

Q. (By Mr. HUNTLEY:) Had you seen her before?
A. I built her.

Direct resumed:

Q. What was left of her?
A. There was part of her engine left and there was part of her hull left; that was all.
Q. What was gone?
A. Part of her decks were all ripped off; partly burnt off and partly ripped off.
Q. I want to know what was not left of her?

Same objection and ruling as heretofore.

A. Her guards were burned and ripped off.
Q. And her deck was gone?
A. Yes, sir.
Q. Well, what else?

A. The side where the collision occurred was all stove in, you know.

Q. What, in your opinion as a shipbuilder, was her value as she lay there at Bushwick creek, at the time you state you saw her?

Same objection and ruling as heretofore. Also objected to on the ground that it was after the boat had been raised and after she had been removed from the place where she was raised, a considerable distance, and there is no evidence as to the time that transpired between the raising of the vessel and the time the witness saw her. Also objected to on the ground that, as a shipbuilder, the witness does not necessarily have any knowledge of her value. Taken subject to objection.

136 A. I shouldn't have given more than twenty-five thousand dollars for her.

Q. What was her value?

A. I don't think she would have brought that if put up at auction.

Q. Have you been an owner of steamboats, as well as a builder?

A. Yes, sir; and am still.

Q. You have owned steamboats as well as built them?

A. Yes, sir,

Q. You originally built the Norwich, did you not?

A. Yes, sir.

Q. Whereabouts did you build her?

A. At Greenpoint; no, she was built in New York.

Q. What year?

A. I can't say what year, whether it was in '61 or '2; somewheres in that neighborhood.

Q. After this collision, did you repair her?

A. Yes, sir.

Q. Do you know when you commenced to repair her—what month?

A. No, sir; I don't remember about the month.

Q. How long after she came to Bushwick creek?

A. I think it was within a week or so; a few days.

Q. (By Mr. HUNTLEY:) You know when she came there?

A. Yes, sir.

Direct resumed:

Q. Do you know, or have you any data by which you know, when she was sunk in Long Island Sound?

[A.] Well, I was out of town; I was in Richmond, Virginia, at the time she was sunk, but I heard of it.

Q. Have you any data by which you know how long a time elapsed between the time she was sunk and the time she was brought to Bushwick creek?

A. I can't say positively.

Q. Do you know whether she was brought to Bushwick creek in the same condition she was in when she was raised?

A. That I don't know; all I know is from what I saw of her.

137 Q. You say you repaired her after she was brought to Bushwick creek?

A. Yes, sir.

Q. How long were you at those repairs?

Same objection and rulings as heretofore.

A. I don't know exactly how long.

Q. Can you give us any idea of what it cost to repair her?

Same objection and ruling as heretofore.

A. I know what it cost.

Q. How much?

[A.] (Examining a memorandum.) It cost to repair her—carpenter's work, $21,668.00; joiner's work, I don't know exactly what that cost, but I suppose in the neighborhood of $5,000.00.

Q. And the engine?

A. That I don't know.

Q. Nor you don't know how long it took to do it?

A. No, sir; but I can tell by the books.

Q. What did you receive for building her originally?

Objected to; and the commissioner calls on the attorney for the petitioner to state the time when he thinks the value of the vessel should be taken for the purposes of this reference, and in answer the petitioner's counsel states the value of the vessel at the time she was raised and brought to Bushwick creek; whereupon the commissioner rules out the question.

Q. Do you, or do you not, know the value of the vessel immediately prior to the time of the collision with the General Van Vliet?

Objected to.

138 Q. How long before the 18th of April, 1866, had you seen the City of Norwich, if that is the day on which this collision took place—can you tell, or do you know?

A. Well, I used to see her almost every day; I used to be on the pier almost every day—maybe every other day; I used to see her three or four times a week; I was down on the dock, generally, when she would be in; I was down where she lay, and I used to be around there three or four times a week.

Q. (By Mr. HUNTLEY:) Did you go aboard of her, and see her?

A. Yes, sir; I used to repair her.

Direct resumed:

Q. What was her value at that time, just before the collision—a day or two before the collision?

A. I shouldn't think she was worth over $60,000.00 at that time; it was in 1866; she was repaired in August.

Cross-examined by Mr. PLACE:

Q. About how soon after she sunk was the first you saw of her?

A. I saw her the same day she came there.

Q. And that, you think, was about a week before you commenced repairing her?

A. Yes, sir; she lay there about that time.

Q. When did you commence repairing her?

A. I can't say; I only took down the cost.

Q. Was it August, 1866?

A. I couldn't say whether that was the time she was finished or commenced.

Q. What is your recollection about it?

A. I can't say, only from what I took down from the book, whether it was August we commenced or August we made the bills out; I could have brought the books down and saved all this
139 wrangling; there is a big difference between the value of a boat in '66 and '64.

Q. In '61 what was the percentage of difference between '61 or '62 and 1866?

A. There was very little, but a big difference in 1864.

Q. What was the difference in 1864?

A. Well, it was almost double.

Q. She was worth almost double in 1864?

A. Yes, sir; the Government was then buying up vessels, and after she was sunk they didn't want any vessels—the war was ended; vessels that brought $200,000.00 in 1864 wouldn't bring $100,000.00 in 1866.

Q. Do you know anything about the machinery she had on board of her; did you examine the machinery within a few days before she sunk?

A. No, sir; only from going on board of her off and on.

Q. And your estimate is based upon your knowledge of the size, the condition, and the material in the vessel?

A. Yes, sir.

Q. Your general knowledge without making any examination for the purpose of ascertaining her value?

A. No more than I am building boats all the time.

Q. Your estimate is based upon your not having made any examination of the vessel immediately before the accident or collision for the purposes of ascertaining her value?

A. No, sir.

Q. I want to know exactly what you know of her condition within a week prior to the accident or collision; what was her condition?

A. It was good; she was a freight boat.

Q. Freight and passenger both?

A. No, sir; no passenger accommodations about her.

Q. Are you not mistaken?

A. No, sir.

Q. Now, what was the injury to her when she was brought into Bushwick creek?

A. Well, there was a hole knocked in the side.

140 Q. About what size?

A. Well, that hole might have been made, as nigh as I can remember, by the bow of a vessel coming into her—a little bigger on top than at the bottom.

Q. Can't you tell about the size?

A. No, sir; not exactly.

Q. Did it necessitate the taking out of a panel, or what was necessary to repair the vessel where the injury occurred?

A. We took her on the dock and took some planking off of her bottom and washed her out, and I think two or three frames were taken out from under her planking; that was all there was to do with the hull.

Q. The majority of the injury was caused by fire, was it not?

A. Yes, sir; as far as we could see; the decks were all burned.

Q. Were the decks as burnt brought ashore?

A. No, sir.

Q. Was the engine brought ashore?

A. I think her side pipes and steam-chest were taken ashore. I am not sure whether they were repaired on board or taken ashore.

Q. Was the boiler brought on shore?

A. No, sir; it was lost; the boiler coming out, ripped her side and decks off.

Q. She bore the appearance of having turned upside down?

A. Yes, sir.

Q. Can you give us any better idea of the time she was built than you have given us?

A. I can when I go home.

Q. Can you now?

A. No, sir.

Q. Can you state whether it was in '60, '61, or '62?

A. No, sir; if my memory serves me, I think it was in '61.

Q. Was she built for this Norwich Company?

A. Yes, sir; I can give you the date exactly if I could refer to my books.

Q. Can you tell now how long you were in putting upon her the repairs that you did put upon her?

A. No, sir; I can't tell anything about it.

141 Q. Can you tell me whether you commenced repairing her before the marshal went aboard of her?

A. I don't think any marshal came on board.

Q. Didn't the marshal libel her?

A. I didn't hear of any marshal libelling her.

Q. Not while she was there at your place?

A. No, sir.

Q. Did you not hear that the marshal had attached her, or taken possession while she was there?

Objected to; ruled out.

A. No, sir.

Hearing adjourned until Tuesday, June 3, 1873, at 2 p. m.

144 JUNE 3, 1873.

Hearing continued. Counsel on both sides present.

Evidence for petitioners resumed.

Counsel for Wm. A. Wright *et al.* and counsel for freighters object to any testimony as to value of the steamer at any other time than her value immediately preceding the collision and loss on the 18th April, 1866; this objection to apply to all testimony taken in this proceeding; the testimony as to value and as to time when value is to be taken to be subject to objections.

JULIUS WEBB, sworn and examined as a witness for petitioner, says:

I am general manager of Norwich & N. Y. Transportation Co. Live at Norwich. Have been general manager since December, 1865. Connected with the company since 1857. I am not a stockholder in the company. I have known the City of Norwich ever since she was built—in 1862. I heard of the collision which is the subject of this proceeding, &c. Was not on board. I saw her at Bushwick creek after she was raised—in August, 1866, I think—and within a day or two after she was brought down. I examined her condition. Went all over her. She was raised by the American Coast Wrecking Co., and on their own account, and not in the employ or on behalf of our company.

Q. In your judgment, what was the value of the steamer, engines, machinery, and furniture, as she lay at Bushwick creek, when you first saw her after she was raised?

Taken subject to objection.

145 A. About $20,000. We paid $22,500 to the wreckers for her, but we didn't think she was worth that.

Q. In your judgment, what was the value of the steamer, her engines, &c., before being raised, lying in the Sound at the place of collision?

Objected to, as speculative, and on the ground that the witness is not shown to be competent to judge of those matters. Objection sustained. Petitioner excepts.

Q. What was the pending freight at the time of the collision?

A. If the steamer had completed her voyage she would have earned about $600.

Cross-examined by Mr. HUNTLEY:

This steamer was insured.

Q. For how much?

Objected to by petitioners, as not within the scope of the referee. Taken subject to objection.

A. I don't know.

Q. Have you been informed?

Objected to as hearsay. Objection sustained.

Q. Will you please state by whom you heard the amount of the insurance stated, you having already said that you have heard it stated?

Objected to, on the ground that the testimony does not show that witness has so stated, and on the ground that it is immaterial from whom he heard it. Objection sustained.

Adjourned to June 18, 1873, at 2 p. m.

JUNE 18, 1873.

Adjourned, by consent, to June 26, 1873, at 1 p. m.

146 JUNE 26, 1873.

Hearing resumed pursuant to adjournment.

Mr. Leveridge and Mr. Donohue for petitioners.

Mr. Huntley for Wm. A. Wright *et al.*, owners of schooner Van Vliet.

JULIUS WEBB cross-examined by Mr. Huntley:

Q. Was the steamer City of Norwich insured at the time of the collision now being investigated?

Objected to. Taken subject to objection.

A. She was.

Q. For how much?

Same objection; same ruling.

A. For $75,000.

Mr. Edwards now appears for owners of cargo.

Martin & Smith now appear for owners of cargo.

Q. Has that insurance, or any part of it, been collected?

Same objection; same ruling.

A. Some portion of it has been collected.

Q. Has the collection been on a loss sustained by this collision?

Same objection; same ruling.

A. I couldn't answer the question——

Q. Has the collection for the insurance been for a loss sustained by or at the time of the collision?

Same objection; same ruling.

147 A. The insurance collected was for the loss of the vessel after the collision on the morning of the 18th April, 1866.

Q. Was that collection on account of a fire which ensued as a consequence of the collision?

Same objection; same ruling.

A. It was.

Q. And the fire immediately followed the collision, did it not?

Same objection; same ruling.

A. Well, the fire occurred very soon after the collision.
Q. How soon after the collison?

Objected to, on the ground that witness has already stated that he was not present; allowed, subject to objection.

A. Well, sir, it was very soon after; within half an hour.
Q. Did you understand that the fire was occasioned by water entering the furnace at the time of or immediately following the collision?

Objected to on same grounds; taken subject.

A. I have heard that it was so.
Q. Did you understand it to be so?
A. I have heard so, yes, sir; I understand it so.

Cross-examined by Mr. EDWARDS:

Q. What portion of the insurance has been collected?

Same objection and ruling.

A. $49,283.07.
148 Q. Is there a contest about the rest, or is it settled?

Same objection and ruling.

A. Well, sir, there ain't enough left of it to contend about; we may get $200 out of a $5,000 policy, and we may not get anything; the other companies are bankrupt; we don't expect to get any more.
Q. Whether there was any marine insurance against fire?

Same objection and ruling.

A. There was no marine insurance in case of fire.
Q. Was that insurance collected for damage done to the vessel arising out of the disaster in question?

Same objection and ruling.

A. Yes, sir.

Hearing adjourned until Wednesday, September 24th, 1873, at 2 o'clock.

149 U. S. District Court, Eastern District of New York.

In the Matter of THE NORWICH AND NEW YORK TRANSPORTATION Co.

APRIL 7th, 1874.

Hearing resumed before E. B. Husted, commissioner.
Messrs. Leveridge and Owen appear for petitioners.
Mr. Huntley for libellant.
Messrs. Martin & Smith for libellants.
A. L. Edwards for libellant.

Mr. Huntley offers in evidence stipulation for value given in the suits against the steamboat City of Norwich in the sum of $70,000, and bearing date March 28th, 1867.

Objected to by counsel for the petitioner; received subject to objection.

Order of reference to C. W. Newton, commissioner, to ascertain and report value of steamboat City of Norwich, and the report made by said commissioner offered in evidence by Mr. Huntley.

Objected to by counsel for petitioner; received subject to objection.

150 J. W. C. LEVERIDGE, sworn and examined, says:

I was the proctor for the claimants of the City of Norwich, at the commencement of this proceeding, and am now; I attended the taking of proof before Commissioner Newton as to the value of the City of Norwich; I don't know that he filed a report; I don't remember whether I, as proctor, filed any exception to the report.

Q. What is your recollection on the subject?

A. I haven't any recollection.

Q. Do you have any recollection of filing exceptions to that report?

A. I have not; still, I may have done so.

Q. What do you mean when you say "I may have done so"?

A. I mean just this: that this suit has been of many years standing, and many and divers proceedings have been had, and it is impossible for me to remember.

Mr. Huntley offers in evidence pages 104 and 476 of Admiralty Register "A," which are admitted by both sides to be the entries of proceedings made by the clerk of this court and his assistant, in the case of Place *et al. vs.* The Steamboat City of Norwich

Objected to by counsel for petitioner as irrelevant, immaterial, and incompetent; taken subject to objection.

Hearing adjourned to April 14, 1874, at 1 p. m.

April 14th, 1874, hearing adjourned to April 21st, at 1p. m.

151 APRIL 21st, 1874.

Messrs. Huntley and Leveridge present.

Mr. Huntley offers in evidence petition of Norwich and New York Transportation Co. to appraise the City of Norwich, etc., filed October 19, 1866.

It is stipulated that the order of reference contained on pages 627 and 628 of Benedict's Admiralty, 2nd edition, is a true copy of order of reference made herein, and offered in evidence on a previous hearing.

Mr. Huntley rests.

Hearing adjourned to April 28th, at 1½ o'clock.

OCTOBER 13th, 1874.

Pursuant to order of reference, the hearing herein being continued from time to time was regularly adjourned to this day.

Martin & Smith appear.

J. W. C. Leveridge appears for petitioner.

Martin & Smith are to furnish brief to the commissioner, and to serve a copy on proctor for the petitioners within ten days.

Petitioners to furnish brief to the commissioner within ten days.

No other appearance.

Mr. Leveridge moves that reference be closed so far as the taking of testimony is concerned.

No one opposing, the motion is granted.

EDWIN B. HUSTED,
Commissioner.

152 District Court of the United States for the Eastern District of New York. In Admiralty.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

George Place and Charles Place, intervening for their interest, except to the report of Edwin B. Husted, Esq., commissioner, &c., filed herein on the sixth day of January, 1875.

First. For that said commissioner was bound, by the report of C. W. Newton, Esq., commissioner, to whom, in pursuance of the prayer of a petition filed by the petitioners herein October 19th, 1866, it was referred by an order of this court, duly made and entered, to ascertain and report the value of the steamboat City of Norwich, which said report was duly confirmed by this court after hearing on exceptions filed thereto, and should have reported the value of said steamboat City of Norwich at seventy thousand dollars.

Second. For that said commissioner was bound by the stipulation for value filed in this court in the matter of the suits against the steamboat City of Norwich, and dated March 28th, 1867, and should have reported the value of said steamboat at seventy thousand dollars.

Third. For that said commissioner should have ascertained and reported the value of said steamboat in the situation and condition she was in immediately prior to the collision.

153 Fourth. For that said commissioner should have ascertained and reported the value of said steamboat immediately subsequent to said collision and before the occurrence of damage by reason of fire or from other cause than said collision.

Fifth. For that said commissioner should have ascertained and reported the value of said steamboat at seventy thousand dollars.

Sixth. For that said commissioner should have added to the sum of $2,500, so by him reported as the value of said steamboat, the further sum of $600, the amount of her freight pending at the time of said collision.

Seventh. For that said commissioner should have added to the sum of $2,500, so by him reported as the value of said steamboat, the sum of $49,283.07, the same being the amount of insurance received by the petitioners herein for loss and damage to said steamboat subsequent to the occurrence of the collision aforesaid.

Eighth. For that said commissioner should have added to the sum of $2,500, so by him reported as the value of said steamboat, the sum of $200 estimated value of insurance due and payable to and uncollected by the petitioners, for and on account of loss and damage to said steamboat subsequent to the collision aforesaid.

Ninth. For that the said commissioner should have reported the value of said steamboat at $3,100.

Tenth. For that the said commissioner should have reported the value of said steamboat at $51,783.07.

154 Eleventh. For that said commissioner should have reported the value of said steamboat at $52,388.07.

Twelfth. For that said commissioner should have reported the value of said steamboat at $52,583.07.

Thirteenth. For that said commissioner should have reported the value of said steamboat at $51,983.07.

Fourteenth. For that said commissioner should have computed interest upon the amount of the insurance upon said steamboat from the date of its receipt by the petitioners, and added the same to the amount so by him reported as her value as aforesaid.

Dated New York, January 16th, 1875.

J. LANGDON WARD,
Proctor for George Place and Charles Place.

Endorsed: Exceptions to commissioners' report. Filed Jan'y 19, 1875.

155 United States District Court, Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

William A. Wright and others, owners of the schooner General Van Vliet, except to the report of the commissioner as to the value of the steamer City of Norwich in this cause as follows:

First. That the value of said steamer, instead of being found at a time subsequent to the collision, should have been found at a time just prior to the collision.

Second. That there should have been no deduction of the expenses of raising the boat.

Third. That the commissioner has not allowed, as part of the value of the boat, the various sums of insurance which were upon her at the time of the collision, and which were afterwards collected by her owners, the claimants herein.

Fourth. That the value of the said steamer should have been found and reported at a sum not less than seventy thousand ($70,000) dollars.

RICHARD H. HUNTLEY,
Proctor for the Owners of Sch. Van Vleit and Cargo.

Endorsed: Exceptions to commissioners' report. Filed Jan'y 20, 1875.

156 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

An order having been heretofore made and entered in the above-entitled matter on the fifth day of March, in the year of our Lord one thousand eight hundred and seventy three, whereby it was, among other things, ordered that an appraisement be had by one of the commissioners of this court of the amount or value of the interest of the said petitioners as owners, respectively, in the steamboat or vessel City of Norwich, and her freight pending for the voyage upon which she was employed, and for which the said petitioners are liable, and that upon the coming in of the report of the said commissioner an order be made for the payment of such valuation into court, or for the giving of a stipulation by the said petitioners with sureties for the payment thereof into court whenever the same shall be ordered, and that upon the payment of such valuation into court, or upon the filing of such stipulation, that the stipulation heretofore given by the said petitioners be cancelled, and the
157 said petitioners and their sureties thereon be discharged from all liability thereunder.

In and by which said order it was further ordered that the further prosecution of all or any suit or suits against the said steamboat, or against the said petitioners as the owners of the said steamboat, in respect to any claim or claims for damages occasioned by the collision, fire, and loss in the said petition mentioned, and all further proceedings, except as to such appraisement, be, and the same were thereby, restrained until the further order of this court.

And Edwin B. Husted, by an order of this court, made and entered on the fourth day of February, 1874, having been appointed such commissioner for the purposes set forth in said first-mentioned order, in the place and stead of Samuel T. Jones, deceased, and the said Edwin B. Husted, as such commissioner, having, on the sixth day of January, 1875, made and filed his report to this court, in pursuance of said order, in and by which said report, among other things, it appears that he had ascertained the value of the said steamboat City of Norwich, in the situation and condition she was in after the collision, and before she was raised, and did find from the testimony taken before him that the said steamboat was at the time of the value of two thousand and five hundred dollars ($2,500); to which said report exceptions were filed, and such exceptions having been argued by the several parties in interest before this court, and due deliberation being thereupon had, it is, on motion of the counsel for said petitioners, ordered that each and every of the said exceptions be, and the same are hereby, overruled.

And, on like motion, it is further ordered that the said report of the said commissioner be, and the same is hereby, in all respects, confirmed.

158 And it is further ordered that the said petitioners do, within twenty days from the entry of this order, pay into this court the said sum of two thousand and five hundred dollars, the amount so reported by the said commissioners as aforesaid.

And it is further ordered that upon the payment of the aforesaid sum into court a monition issue in due form against all persons and parties claiming damages for any loss, destruction, or injury occasioned by the collision and fire in the said petition mentioned, citing them and each of them to appear before this court and make due proof of their respective claims, on or before a certain day to be therein named, which is not to be less than three months from the issuing of such monition, and that such monition be served upon all such claimants who have not appeared by their proctors by publishing the same in one of the newspapers published in the city of Brooklyn, in the eastern district of New York, once a week for the period of three weeks; and that the said monition or notice thereof be served upon the proctors for the libellants in the several suits mentioned in the said petition.

And it is further ordered that upon the return of the said monition it be referred to B. Lincoln Benedict, Esquire, one of the commissioners of this court, upon due proof of the publication and of the service of the same or notice thereof, as above directed, to take proof of all claims which shall have been presented in pursuance of such monition and notice, subject to the right of any person interested to question or controvert the same; and, after hearing such proofs and allegations, that upon the completion of said proof the said commissioner report the claims so proven.

159 And it is further ordered that all directions for the distribution of the aforesaid sum among the claimants thereof, and in respect to the costs and expenses of the proceedings in this matter, be reserved until the coming in and confirmation of the commissioner's report.

And it is further ordered that the libellants in each and every of the respective suits against the aforesaid steamboat or against her owners, and which are mentioned or referred to in the petition in this matter, that is to say, George Place, Charles Place, Richard L. Campbell, John H. Hall, Augustin Smith, the Salisbury Mills, the Stark Mills, the Amoskeag Manufacturing Company, James M. Beebe, George I. Fiske, the Bigelow Carpet Company, the Willimantic Linen Company, the Merrick Thread Company, the Monson Woolen Manufacturing Company, The Hampden Cotton Manufacturing Company, Francis M. Bardwell, Alexander Bigelow, George Barbour, James M. Meade, Manton E. Townsend, Joseph Andrews, Charles D. Bigelow, George L. Trask, Eliab A. Converse, Seth B. Hunt, Philip Tillinghast, Robert W. Aborn, The Smithville Manufacturing Company of Willimantic, Connecticut, John Slater, William Slater, C. and C. G. Winchester, Charles Miles and Company, The Converseville Manufacturing Company of Stafford, Tolland county,

Connecticut; Nelson D. White, Horatio N. Slater, Horatio N. Slater, Jun., Lydia R. Slater, William S. Slater, and Royal O. Storrs, composing the Slater Woolen Company of Webster, Massachusetts; Horatio N. Slater, Lydia R. Slater, and William S. Slater, composing the firm of Samuel Slater's Sons; Oscar F. Chase and Lucius S. Harris, composing — firm of O. F. Chase and Company; H. C. Sales and Company, Charles H. Kenyon and Company, Charles Osgood and Company, Leonard M. Hills and Son, Smedley Brothers, The Shetucket Company, The Whitestone Company, Hall, Southwick and Company, John Wright, and Evan Wright and
160 Company, Henry T. Jenkins, Timothy D. Vail, Merwin and Bray, William A. Wright, Samuel Hemingway, William Bestworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, Henry L. Slaight, Dan Smith, Jesse Ludington, John B. Ludington, and Jesse C. Ludington, owners of the schooner or vessel called the General S. Van Vliet; James H. Diggles, Thomas D. Mason, and Anson L. White, and all other persons or parties, be, and they and each and every of them, their proctors, advocates, and agents, are hereby, perpetually enjoined and restrained, by force and virtue of this order, from taking any further action or proceedings in said suits, respectively, and from in any manner continuing the prosecution thereof, or taking any proceedings in relation to such loss, destruction, or injury, except in so far as it respects the costs therein.

CHAS. L. BENEDICT.
J. W. C. LEVERIDGE,
Proctor for Petitioners.

Endorsed: Order confirming report of commissioner as to valuation. Filed and entered March 29, 1876.

EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, Greeting:

Whereas a petition has been filed in the district court of the United States for the eastern district of New York on the 13th day of June, in the year of our Lord one thousand eight hundred and seventy-two, by The Norwich and New York Transportation Company, among other things, praying that a monition issue against all
161 persons and parties claiming damages for any loss, destruction, damages, or injury arising out of a collision on the morning of the eighteenth day of April, 1866, between the steamboat City of Norwich and the schooner General S. Van Vliet, and the subsequent burning of said steamboat, in said petition mentioned, citing them to appear before this court and make due proof of their respective claims.

You are therefore hereby commanded to give due notice to all persons and parties claiming damages for loss, destruction, or injury occasioned by the collision and fire in said petition named to appear before the said court, to be held in and for the eastern district

of New York, on the fifth of April, 1877, at 11 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to make due proof of their respective claim, by service of a copy of said monition or notice thereof upon the proctors for the libellants in the several suits mentioned in the said petition, and by publishing this monition in one of the newspapers published in the city of Booklyn, once a week, for the period of three weeks, as to all such claimants who have not appeared by their proctors.

And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Charles L. Benedict, judge of said court, at city of Brooklyn, in the eastern district of New York, this 28th day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundred and first.

[L. S.] B. LINCOLN BENEDICT, *Clerk.*

Granted.
C. L. B.

162 Endorsed.

EASTERN DISTRICT OF NEW YORK, *ss:*

I, Samuel R. Harlow, U. S. marshal for the eastern district of New York, do hereby certify that on the 5th day of January, 1877, I personally served on Alex. McCue, John C. Perry, J. Langdon Ward, —— Smith (of Martin & Smith), Gratz Nathan, —— Rice, (of Kittridge & Rice), Peter B. Olney, E. L. Owen, R. H. Huntley, P. S. Crooke, and on the 6th day of January, 1877, J. K. Hill, A. J. Vanderpoel, and R. W. Townsend, proctors for the libellants in the several suits mentioned in the said petition, a copy of the within monition. And I further return that I have given due notice to all persons and parties claiming damages for any loss, destruction, or injury occasioned by the collision and fire in said petition named to appear before the said court to be held in and for the eastern district of New York, on the 5th day of April, 1877, at 11 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to make due proof of their respective claims by publishing the monition in the Brooklyn Daily Union (a newspaper published in the city of Brooklyn), once a week, for the period of three weeks, the first publication of which was on the 28th day of December, 1876.

Dated April 5th, 1877.

S. R. HARLOW,
U. S. Marshal, E. D. of N. Y.

Monition filed April 5th, 1877.

163 At a stated term of the district court [of the United States] of America for the eastern district of New York, held at the

United States court-rooms of the city of Brooklyn, on Thursday, the 5th day of April, 1877.

Present: The Hon. C. L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

The Norwich and New York Transportation Company, the owners and claimants of the steamboat City of Norwich, her engines, tackle, apparel, and furniture, having heretofore presented their petition to this court, duly verified, setting forth, among other things, that by reason of the facts and circumstances stated in said petition, and by reason of the decision of the Supreme Court of the United States, in the suit against them therein mentioned, and the rules adopted by the Supreme Court to govern cases of this character, they are entitled to and claim the benefit of a limitation of liability provided for in the third and fourth sections of the act entitled "An act to limit the liability of ship owners, and for other purposes," passed March 3, 1851, and praying that this court would cause an appraisement to be had, by one of the commissioners of this court, of the amount of value of the interest of the said petitioners as owners, respectively, in such steamboat or vessel and her freight pending upon the voyage on which she was employed, and for which the said petitioners are liable, and that upon the coming in of the report an order might be made for the payment of such valuation into this court, or for the giving of a stipulation by the said petitioners with sureties for
164 the payment thereof into court when the same should be ordered, and that upon the payment of such valuation into court, or upon the filing of such stipulation, that the stipulation theretofore given by the said petitioners might be cancelled, and the said petitioners and their sureties be discharged from all liability thereunder, and an appraisement having been thereupon had in accordance with the prayer of said petition, and the value of the interest of said petitioners as owners respectively in the steamboat or vessel City of Norwich and her freight pending for the voyage for which she was employed, having been appraised at the sum of $2,500, and the said petitioners having thereupon paid said sum into court, and a monition having issued in due form against all persons and parties claiming damages for any loss, destruction, or injury by the collision and fire in the said petition mentioned, citing them and each of them to appear before this court and make due proof of their respective claims on or before the 5th day of April, A. D. 1877, not less than three months from the issuing of such monition. Now, on the return day thereof the marshal having returned the same duly served and published as required, and proclamation having been duly made, and the Norwich and New York Transportation Company, the petitioners, appearing by Mr. J. W. C. Leveridge, their proctor; William A. Wright, Samuel Hemingway, William Betsworth, William M. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, Henry Haight, Dan. Smith, Jesse Ludington, John B. Ludington, and Jesse C. Ludington, appearing by Mr. R. H. Huntley, their proctor; George Place and

Charles Place, appearing by Mr. J. Langdon Ward, their proctor; the Monson Woolen Manufacturing Company, the Hampden Cotton Manufacturing Company, Francis M. Bardwell, Alexander Bigelow, and George Barbour, appearing by Mr. Philip S.
165 Crooke, their proctor; Charles D. Bigelow and George S. Trask, appearing by Messrs. Kittridge and Rice, their proctors; Richard L. Campbell, John H. Hall, and Augustine Smith, the Salisbury Mills, the Stark Mills, the Amoskeag Manufacturing Company, James M. Beebe and George and George J. Fiske, Robert M. Baily and George C. Bosson, appearing by Messrs. Martin and Smith, their proctors; Seth B. Hunt, Phillip Tillinghast, and Robert W. Aborn, appearing by Messrs. Brown, Hall & Vanderpoel, their proctors; Nelson D. White, appearing by Peter B. Olney, his proctor; John Slater, William Slater, C. Winchester, G. C. Winchester, Charles Miles, Henry C. Miles, Calvin Claflin, Horatio N. Slater. Lydia R. Slater, William S. Slater, Oscar F. Chase, Lucius Harris, Harris C. Sayles, Sabin L. Sayles, Thomas D. Sayles, Charles H. Kenyon, Solomon Barber, Charles Osgood, Gilbert Osgood, Leonard M. Hills, Henry F. Hills, James Smedley, Samuel N. Smedley, The Shetucket Company, The Whitestone Company, William A. Hall, Henry C. Southwick, Jesse St. John, Adolphus F. Carter, Augustus Kirkham, Matthew Bunker, John S. Wright, Eben Wright, John H. Wright, Henry T. Jenkins, Timothy D. Vail, Horatio N. Slater, Jr., Lydia R. Slater, William S. Slater, and Royal O. Storrs, appearing by Mr. E. L. Owen, their proctor; Benjamin F. Sherman and John B. Cole, appearing by J. K. Hill, their proctor; and no other claimants or parties appearing, on motion of J. W. C. Leveridge, Esq., it is—

Ordered, That all persons and parties claiming damages for any loss, destruction, or injury by the collision and fire in the said petition mentioned other than those appearing as above recited, be, and they are hereby declared to be, in contumacy and default.

166 And it is further ordered that it be referred to B. Lincoln Benedict, Esquire, one of the commissioners of this court, to take proof of the respective claims of the parties who have appeared as above recited, subject to the right of any person interested to question and controvert the same; and after hearing such proofs and allegations, upon the completion of said proof, to report the claims so proven and the amount thereof.

CHAS. L. BENEDICT.

Endorsed: Order of reference. Filed and entered April 13th, 1877.

167 District Court of the United States, Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

We hereby consent that the order of reference entered in this matter on the fifth day of April, 1877, be amended by striking out

the words, "on motion of J. W. C. Leveridge, Esqr.," and that an order to that effect be entered.

December 28, 1877.

J. LANGDON WARD,
Proctor for Place et al.
PHILIP S. CROOKE,
Proctors for various persons, 4 Causes.
PETER B. OLNEY,
Proctor for Nelson D. White.
R. H. HUNTLEY,
Proctor for Wm. A. Wright, et al.
MARTIN & SMITH,
Proctor for five different Parties.
EDWARD L. OWEN,
Proctor for different Libellants.
KITTRIDGE & RICE,
Proctors for Chas. D. Bigelow.

168 At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 29th day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH AND N. Y. TRANSPORTATION CO.

Upon reading and filing the annexed consent, and upon motion of J. W. C. Leveridge, proctor for the petitioner, it is—

Ordered, That the order of reference heretofore made in the above-entitled matter, upon the 5th day of April, 1877, referring the matters therein mentioned to B. Lincoln Benedict, U. S. commissioner, be, and is hereby, amended by striking out on the fourth page, and the sixth and seventh lines from the bottom of the page, the words, "on motion of J. W. C. Leveridge, Esq."

CHARLES L. BENEDICT.

Endorsed: Order amending order of reference. Filed and entered Dec. 29, 1877.

169 *Notice of Reference.*

District Court of the United States for the Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me, (a commissioner duly appointed by the circuit court of the United States for the eastern district of New York, under and by virtue of the acts of Congress in such cases made

and provided,) at my office at the United States court buildings, Montague street, corner of Clinton, in the city of Brooklyn, on the 28th day of December, at 11 o'clock in the forenoon of that day, at which time and place you are hereby notified to attend with the testimony you may have to offer in the matter referred.

Dated Brooklyn, the 20th day of Dec., A. D. 1877.

Yours, &c., B. LINCOLN BENEDICT,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Eastern District of New York, in the Second Circuit.

170 *Commissioner's Report.*

United States District Court, Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

In pursuance of a decretal order of reference made and entered in the above-entitled cause, by which it was referred to one of the commissioners of this court to take proof of the respective claims of all parties who have appeared in the above named matter, and whose names are set forth in the aforesaid order of reference, and report thereon to the court, I, B. Lincoln Benedict, United States commissioner, to whom the matter was referred, do respectfully report:

That I have been attended on such reference by the proctors for George Place *et al.;* Wm. A. Wright *et al.;* Nelson S. White; The Hampden Manufacturing Company; Francis M. Bardwell; Alexander Bigelow *et al.;* The Monson Woolen Manufacturing Co.; Chas. D. Bigelow *et al.;* James M. Beebe *et al.;* The Salisbury Mills; The Stark Mills; The Amoskeag Co.; Richard L. Campbell *et al.;* Seth B. Hunt *et al.;* C. & G. C. Winchester; Chas. Miles *et al.;* and John & Wm. Slater; and have taken and examined the proofs offered in evidence, which are as follows:

171 For Wm. A. Wright *et al.* and Dan. Smith and Ludington & Co., exemplified copy of a decree by the district court of the U. S. for the district of Connecticut, and affirmation of the same by the circuit court for the second judicial circuit.

For all others named, the reports on file in this court of the commissioner heretofore ordered to examine and report upon the claims of the above named.

And thereupon I find the amounts so reported of the respective claims, with interest thereon from the several dates of said reports, to be as set forth in the following schedule:

Geo. Place *et al.*	$7,850 00
Int. heretofore allowed, at 7 per cent.	2,127 80
Int. from Mar. 2, 1870, at 6 per cent.	3,745 80
Total	$13,723 60

William A. Wright *et als.*		$19,975 00
Int. heretofore allowed, at 7 per cent.		1,417 65
Int. from Ap'l 23, 1867, at 6 per cent.		12,950 96
Total		34,343 61
Dan. Smith & J. Ludington & Co.		1,921 63
Int. heretofore allowed, at 7 per cent.		136 40
Int. from Ap'l 23, 1867, at 6 per cent.		1,248 23
Total		3,306 26
Nelson D. White		4,592 50
Int. heretofore allowed		1,445 92
Int. from June 29, 1870, at 6 per cent.		2,108 84
Total		8,147 26
The Hampden M'f'g Co.		4,834 69
Int. heretofore allowed, at 7 per cent.		1,314 23
Int. from Mar. 8, 1870, at 6 per cent.		2,296 47
Total		9,445 39
Francis M. Bardwell		805 70
Int. heretofore allowed, at 7 per cent.		219 00
Int. from Mar. 8, 1870, at 6 per cent.		382 70
Total		1,407 40
172 Alexander Bigelow *et al.*		569 94
Int. heretofore allowed, at 7 per cent.		154 60
Int. from Mar. 3, 1870, at 6 per cent.		271 92
Total		996 46
Monson Woolen M'f'g Co.		1,623 94
Int. heretofore allowed, at 7 per cent.		441 41
Int. from Mar. 8, 1870, at 6 per cent.		772 36
Total		2,836 71
Chas. D. Bigelow *et al.*		3,815 00
Int. heretofore allowed, at 7 per cent.		1,037 04
Int. from Mar. 8, 1870, at 6 per cent.		2,290 40
Total		7,142 44
James M. Beebe *et al.*		1,443 72
Int. heretofore allowed, at 7 per cent.		391 61
Int. from Mar. 3, 1870, at 6 per cent.		688 66
Total		2,523 99

The Salisbury Mills		$5,342 24
Heretofore deducted		390 94
		4,951 30
Int. heretofore allowed		1,155 52
Int. from Mar. 3, 1870, at 6 per cent.		2,365 85
Total		8,472 68
The Stark Mills		6,461 80
Heretofore deducted		194 25
		6,267 55
Int. heretofore allowed		1,751 14
Int. from Mar. 3, 1870, at 6 per cent.		2,989 70
Total		11,008 38
The Amoskeag M'f'g Co.		9,986 86
Heretofore deducted		958 89
		9,017 97
Int. heretofore allowed		2,680 20
Int. from Mar. 3, 1870, at 6 per cent.		4,301 63
Total		15,999 80
173 Richard L. Campbell *et al.*		3,181 30
Int. heretofore allowed, at 7 per cent.		862 30
Int. from Mar. 2, 1870, at 6 per cent.		1,518 01
Total		5,561 61
Seth B. Hunt *et al.*		5,634 68
Heretofore deducted		130 96
		5,503 72
Int. heretofore allowed, at 7 per cent.		1,496 10
Int. from Mar. 8, 1870, at 6 per cent.		2,721 61
Total		9,721 43
C. & G. C. Winchester		1,354 50
Int. heretofore allowed		397 43
Int. from June 27, 1870, at 6 per cent.		619 69
Total		2,371 62
Charles Miles *et al.*		2,054 00
Int. heretofore allowed		609 86
Int. from June 15, 1870, at 6 per cent.		1,404 84
Total		4,068 70

John & Wm. Slater	$3,564 20
Int. heretofore allowed	1,045 79
Int. from June 27, 1870, at 6 per cent.	1,730 46
Total	6,340 45

All of which is respectfully submitted.

B. LINCOLN BENEDICT,
U. S. Commissioner.

Brooklyn, Feb. 13, 1878.

Endorsed: Presented to court and filed. Confirmed *nisi* 10 days. February 13th, 1878. B. Lincoln Benedict, clerk.

174 District Court of the United States, Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

The Norwich and New York Transportation Company, the above-named petitioners, hereby except to the report of B. Lincoln Benedict, Esq., bearing date the thirteenth day of February, 1878, as to the damages sustained by all the parties making claims in the above-entitled matter, except William A. Wright and others and Dan Smith, Ludington & Co., for the following reasons:

First. That the reports on file of the commissioner heretofore ordered to examine and report on the claims of the above-named parties were improperly admitted as evidence before the commissioner in this matter and proceeding.

Second. That said reports on file did not furnish sufficient and proper evidence to sustain the report made by the commissioner herein in reference to said claims, or any or either of them.

Third. That there was no evidence submitted to the commissioner herein in reference to said claims or any or either of them.

J. W. C. LEVERIDGE,
Proctor for Petitioners.

R. D. BENEDICT, *Advocate.*

Endorsed: Exceptions. Filed February 19, 1878.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the 27th day of September, in the year of our Lord one thousand eight hundred and seventy-eight.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

175 The above-entitled matter coming on to be heard upon the exceptions filed herein to the report of B. Lincoln Bene-

dict, United States commissioner, and said exceptions having been argued and submitted and due deliberation having been had thereon:

Now, on motion of the proctors of the several parties who have proved their claims herein,

It is ordered, That said exceptions be, and the same are hereby, overruled, and that said report of said commissioner be, and the same is hereby, in all respects confirmed.

CHAS. L. BENEDICT.

Endorsed: Order overruling exceptions, etc. Filed and entered Sept. 27th, 1878.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the 16th day of January, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

It appearing to the court that certain errors of computation exist in the decree entered herein on the fourth day of January, A. D. 1879:

It is now ordered, That the said decree be amended so as to read as follows, and that the following decree be entered herein *nunc pro tunc*, as of the said fourth day of January, A. D. 1879.

CHAS. L. BENEDICT.

176 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the fourth day of January, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Honorable Charles L. Benedict, district judge.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

A petition having been duly filed herein on the thirteenth day of June, 1872, praying for a limitation of the liability of the petitioners as owners of the steamboat City of Norwich, by reason of a collision of said steamer with the schooner General S. Van Vliet, which occurred on the 28th of April, 1866, and a subsequent burning and sinking of said steamboat;

And an order having been, on the 5th of March, 1873, entered on said petition, whereby it was, among other things, ordered that an appraisement be made by one of the commissioners of this court of the value of the interest of said petitioners as owners of the said steamboat and her freight, pending for the voyage for which she was employed;

And the report of said commissioner having been duly
177 made and filed, whereby, among other things, the value of the said steamboat was appraised at the sum of $2,500, and an order having been thereupon made and entered in the said above-entitled matter on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and seventy-six, whereby it was, among other things, ordered that said report be confirmed, and that the said petitioners do, within twenty days from the entry of the said order, pay into the court the sum of two thousand and five hundred dollars, the amount reported by the said commissioner as the value of the said steamboat City of Norwich in the situation and condition she was in after the collision and before she was raised;

And the said petitioners having, in pursuance of said order, and on the fifteenth day of April, 1876, paid unto this court the said sum of twenty-five hundred dollars within the time limited and prescribed by said order;

And it having been further ordered in said order that upon the payment of the aforesaid sum into court a monition issue, in due form, against all persons and parties claiming damages for any loss, destruction, or injury occasioned by the collision and fire in the said petition mentioned, citing them and each of them to appear before this court and make due proof of their respective claims on or before a certain day to be therein named, said day not to be less than three months from the issuing of such monition, and that such monition be served upon all such claimants in the manner prescribed in and by said order;

And a monition having been duly issued pursuant to said order, on or about the 28th of December, 1876, which said monition was returnable on the fifth day of April, 1877, and said monition having been returned duly served, and upon the return of said
178 monition, it having been referred to B. Lincoln Benedict, Esquire, one of the commissioners of this court, upon due proof of the publication and of the service of said monition, or notice thereof, as directed by said order to take proof of all claims which shall have been presented in pursuance of such monition and notice, subject to the right of any person interested to question or controvert the same, and after hearing such proofs and allegations that, upon the completion of said proof, the said commissioner report the claims so proven, upon which said reference the following parties appeared before the said commissioner by their respective proctors, that is to say: George Place and Charles Place, by J. Langdon Ward, their proctor; Richard L. Campbell, John H. Hall, Augustine Smith, The Salisbury Mills, The Stark Mills, The Amoskeag Manufacturing Company, James M. Beebe, and George J. Fisk, by Martin & Smith, their proctor; The Monson Woolen Manufacturing Company, The Hampden Cotton Manufacturing Company, Alexander Bigelow, George Barbour, and Francis M. Bardwell, by Philip S. Crooke, their proctor; Charles D. Bigelow and George S. Trask, by Kittridge & Rice, their proctors; Seth B. Hunt, Philip Tillinghast, and Robert W. Aborn, by Brown, Hall & Vanderpoel, their proctors; John

Slater, William Slater, C. & G. C. Winchester, Charles Miles & Company, Horatio N. Slater, Horatio N. Slater, Junior, Lydia R. Slater, William S. Slater, and Royal O. Storrs, composing the Slater Woolen Company, of Webster, Massachusetts; Horatio N. Slater, Lydia R. Slater, and William S. Slater, composing the firm of Samuel Slater's Sons; Oscar F. Chase and Lucius S. Harris, composing the firm of O. F. Chase & Company; H. C. Sales & Company, Charles H. Kenyon & Company, Charles Osgood & Company, Leonard M. Hills & Son, Smedley Brothers, The Shetucket Company, the Whitestone Company, Hall, Southwick & Company; John Wright and
179 Evan Wright & Company, by E. L. Owen, their proctor; Nelson D. White, by Peter B. Olney, his proctor; and William A. Wright, Samuel Hemingway, William Betsworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, Henry L. Slaight, Dan. Smith, Jesse Ludington, John B. Ludington, and Jesse C. Ludington, owners of the schooner or vessel called the General S. Van Vliet, by R. H. Huntley, their proctor—all other persons and parties having failed to appear, or to prove their claims, as required by the said order and monition;

And the said commissioner having, upon due proof of the service of said monition and notice, as directed by said order, thereupon proceeded to take proof of all claims which were presented in pursuance of said monition and notice, and having, thereupon, found and reported that the following claims had been duly proved before him—that is to say:

George Place *et al.*	$13,723 60
William A. Wright *et al.*	34,343 61
Dan. Smith & J. Ludington & Co.	3,306 26
Nelson D. White	8,147 26
The Hampden Manufacturing Co.	9,445 39
Francis M. Bardwell	1,407 40
Alexander Bigelow *et al.*	996 46
Monson Woolen M'f'g Co.	2,836 71
Charles D. Bigelow *et al.*	7,142 44
James M. Beebe *et al.*	2,523 99
The Salisbury Mills	8,472 68
The Stark Mills	11,008 39
The Amoskeag M'f'g Co.	5,999 80
Richard L. Campbell *et al.*	5,561 61
Seth B. Hunt *et al.*	9,721 43
C. & G. C. Winchester	2,371 62
Charles Miles *et al.*	4,068 70
John & Wm. Slater	6,340 45

Which said report of the said commissioner has been duly confirmed:

180 Now, on motion of J. W. C. Leveridge, Esq., counsel for petitioners—

Ordered, That the remainder of said money so paid in by the petitioners, now in the registry of this court, after payment under

orders heretofore entered, be distributed by the clerk of this court as follows:

To the petitioners aforesaid, and to the several parties who have appeared and proved their claims as aforesaid, or to their proctors respectively, their bills of costs and expenses, other than clerk's costs which are hereinafter specified, in this proceeding, as taxed by the clerk, on the 15th day of November, 1878, which taxation is hereby approved and confirmed, viz:

To the petitioners or their proctors, one thousand and eight and $\frac{41}{100}$ dollars, which includes commissioner's costs.

To Richard L. Campbell, John H. Hall, and Augustine Smith, libellants, or their proctors, forty dollars.

To the Salisbury Mills, libellants, or their proctors, forty dollars.

To the Amoskeag Manufacturing Company, libellants, or to their proctors, forty dollars.

To the Stark Mills, libellants, or to their proctors. forty dollars.

To James M. Beebe and George Fiske, libellants, or to their proctors, forty dollars.

To the Hampden Manufacturing Company, libellants, or their proctors, forty dollars.

To the Monson Woolen Company, libellants, or their proctors, forty dollars.

181 To Alexander Bigelow and Francis Barbour, libellants, or their proctors, forty dollars.

To Francis M. Bardwell, libellant, or his proctor, forty dollars.

To John Slater and William Slater, libellants, or their proctors, forty dollars.

To Charles Miles & Company, libellants, or their proctors, forty dollars.

To C. Winchester and G. C. Winchester, libellants, or their proctors, forty dollars.

To George Place and Charles Place, libellants, or their proctors, fifty $\frac{37}{100}$ dollars.

To Nelson D. White, libellant, or his proctor, forty dollars.

To Charles D. Bigelow and George L. Trask, libellants, or their proctor, forty dollars.

To Seth B. Hunt, Philip Tillinghast, and Robert Aborn, libellants, or their proctor, forty dollars.

To William A. Wright, Samuel Hemingway, William Betsworth, William N. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry T. Slaight, libellants, and to Dan. Smith, J. Ludington, John B. Ludington, and Jesse Smith, libellants, or their proctors, forty-two $\frac{64}{100}$ dollars.

To the clerk of this court, his fees taxed in the above-named bill of costs, amounting to one hundred and ten and $\frac{75}{100}$ dollars.

And it is further ordered, That the remainder of said money, after payment of the sums aforesaid, amounting to two hundred and sixty-nine and $\frac{32}{100}$ dollars, be divided among the several parties hereinbefore named who have proved their claims as aforesaid, in

182 proportion to the amounts so proved, and that the clerk pay

the said proportionate sums to the parties respectively, or to their proctors of record, as follows:

To George Place and Charles Place	$26 85
William A. Wright, Samuel Hemingway, William Betsworth, William N. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, Henry S. Slaight	67 65
Dan. Smith, J. Ludington, John B. Ludington, and Jesse Smith	6 46
Nelson D. White	15 94
The Hampden Manufacturing Company	18 49
Francis M. Bardwell	2 75
Alexander Bigelow and Francis Barbour	1 95
Monson Woolen Manufact'g Company	5 63
Charles D. Bigelow and George L. Trask	13 97
James M. Beebe and George J. Fiske	4 92
Salisbury Mills	16 57
Stark Mills	21 55
Amoskeag Manufacturing Company	11 75
Richard L. Campbell, John H. Hall, and Augustin Smith	10 88
Seth B. Hunt, Philip Tillinghast, and Robert Aborn	19 03
C. Winchester and G. C. Winchester	4 58
Charles Miles & Co.	7 95
John Slater and William Slater	12 40

An it is further ordered, adjudged, and decreed, That the petitioners, The Norwich and New York Transportation Company, owners of said steamboat or vessel City of Norwich, her tackle, &c., and the said steamboat or vessel be, and they are hereby, forever discharged of and from all and every claim and demand whatever arising from or growing out of the collision and fire in the said petition mentioned, and that the libellants in each and every of the suits already commenced in this court and elsewhere against
183 said steamboat or vessel, her tackle, &c., or against the said The Norwich and New York Transportation Company, and especially, George Place, Charles Place, Richard L. Campbell, John H. Hall, Augustin Smith, The Salisbury Mills, The Stark Mills, The Amoskeag Manufacturing Company, James M. Beebe, George J. Fiske, The Bigelow Carpet Company, The Willimantic Linen Company, The Merrick Thread Company, The Monson Woolen Manufacturing Company, The Hampden Cotton Manufacturing Company, Francis M. Bardwell, Alexander Bigelow, George Barbour, James M. Meade, Manton E. Townsend, Joseph Andrews, Charles D. Bigelow, George L. Trask, Eliab A. Converse, Seth B. Hunt, Philip Tilinghast, Robert W. Aborn, The Smithville Manufacturing Company of Willimantic, Connecticut, John Slater, William Slater, C. & G. C. Winchester, Charles Miles & Company, The Converseville Manufacturing Company of Stafford, Tolland county, Connecticut, Nelson D. White, Horatio N. Slater, Horatio N. Slater, Junior, Lydia R. Slater, William S. Slater, and Royal O. Storrs, composing the Slater

Woolen Company of Webster, Massachusetts; Horatio N. Slater, Lydia R. Slater, and William S. Slater, composing the firm of Samuel Slater's Sons; Oscar F. Chase and Lucius S. Harris, composing the firm of O. F. Chase & Company; H. C. Sales & Company, Charles H. Kenyon & Company, Charles Osgood & Company, Leonard M. Hills and Son, Smedley Brothers, The Shetucket Company, The Whitestone Company, Hall, Southwick & Company, John Wright and Evan Wright & Company, Henry T. Jenkins, Timothy D. Vail, Merwin & Bray, William A. Wright, Samuel Hemingway, William Betsworth, William U. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, Henry L. Slaight, Dan. Smith, Jesse Ludington, John B. Ludington, and Jesse C. Ludington, owners of the schooner or vessel called the General S. Van
184 Vliet, James H. Diggles, Thomas D. Mason, and Ansel L. White, and all and every other person or persons claiming any loss or damage occasioned by reason of the said collision and fire in said petition mentioned be, and they hereby are, perpetually enjoined from the further prosecution of their said suits, or of any claim arising from or growing out of said collision and fire against the said petitioners, The Norwich and New York Transportation Company, owners of the said steamboat or vessel City of Norwich, or against their stipulators or sureties, or against the said steamboat or vessel City of Norwich, her tackle, &c., saving and excepting, however, from the effect of said injunction the right of any of the said libellants or plaintiffs in any such action to proceed therein for the collection of any costs which he or they may be entitled to recover in said action, and for no other purpose.

CHAS. L. BENEDICT.

Endorsed: Final decree. Filed and entered *nunc pro tunc* as of the 4th day of January, 1879.

185 Circuit Court of the United States for District of Connecticut. September Term, 1870.

WILLIAM A. WRIGHT *et al.*

vs.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

This cause having been heard in this court on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being had, it is now, at this
186 term of the circuit court of the United States, holden at Hartford, within and for the district of Connecticut, on the third Tuesday of September, 1870, to wit, on this 20th day of September, ordered, adjudged, and decreed that the decree rendered in the district court of the United States in this cause, and appealed from to this court, be in all things affirmed with costs, and the said appellees have execution for the sums decreed to be paid to them respectively by said decree, and the stipulators cause their stipulations to be fulfilled.

L. B. WOODRUFF,
Circuit Judge.

UNITED STATES OF AMERICA, } ss:
District of Connecticut, }

I, Edwin E. Marvin, clerk of the district court of the United States for the district of Connecticut, do certify that the annexed paper is a true copy of the original decree in the matter of William A. Wright *et al. vs.* The Norwich and New York Transportation Co., on file in said court.

In testimony whereof, I have set hereto my name officially, and the seal of said court, at Hartford, in said district, this 26th day of December, A. D. 1877.

[L. S.] EDWIN E. MARVIN, *Clerk.*

187 U. S. Dist. C't, Dist. of Conn. Feb. Term, 1867, *ss.* April 23, 1867.

WILLIAM A. WRIGHT *et al.*
vs.
THE NORWICH AND NEW YORK TRANSPORTATION CO.

On reading and filing the report of Alfred Blackman, Esq., commissioner, to whom the above matter was referred, and by decree heretofore passed, on motion of C. R. Ingersoll, proctor for libellants, it is ordered that the defendants pay to the libellants, William A. Wright, Samuel Hemingway, William Betsworth, William W. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, being the owners of the schooner General S. Van Vliet, the sum of nineteen thousand nine hundred and seventy-five ($19,975) dollars, together with interest thereon from the 18th day of April, 1866, that being the amount of damage suffered by said libellants by reason of the collision mentioned in their libel, and that the defendants pay to the libellants, Dan. Smith and J. Ludington & Company, being the owners of the cargo on board said schooner at the time of said collision, the sum of one thousand nine hundred and twenty-one dollars and sixty-three cents ($1,921.63), together with interest thereon from the 18th day of April, 1866, that being the amount of damages suffered by said last-mentioned libellants by reason of said collision, and that the libellants recover their costs to be taxed, and respectively have execution to satisfy this decree; and the report of said commissioner is hereby confirmed to the extent hereinabove stated.

WILLIAM D. SHIPMAN, *Judge.*

188 *Libellants' Costs.*

U. S. District C't. Feb. T., 1867.

WILLIAM A. WRIGHT *et al.*
vs.
NORWICH AND NEW YORK TRANSPORTATION CO.

Docket fee	$20 00
Marshal's fees	16 75
Clerk fees	32 25

Witnesses' fees	$26 90
Depositions	55 80
Commissioner's fees and witnesses' fees on assessment of damages	54 90
	$206 60

Taxed by consent.

Per ALFRED BLACKMAN, *Clerk.*

UNITED STATES OF AMERICA, *District of Connecticut*, } *ss:*

I, Edwin E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, do certify that the annexed paper is a true copy of the original final decree in the matter of William A. Wright *vs.* The Norwich and New York Transportation Co., on file in said court.

In testimony whereof, I have set hereto my name officially and the seal of said court, at Hartford, in said district, this 26th day of December, A. D. 1877.

[L. S.] EDWIN E. MARVIN, *Clerk.*

189 *Page No.* 104. *Admiralty Register A. See Fol.* 215, *Printed Record.*

GEORGE PLACE and CHARLES PLACE } H. C. PLACE.
vs.
THE STEAM VESSEL CITY OF NORWICH. } J. W. C. LEVERIDGE.

1866.

August 24. Filed libel with stipulation for costs, issued process returnable September 12. Fees paid, $7.55.

September 12. Process returned. Vessel attached. No notice given. Claimants appear and have 3 weeks to answer. Default *nisi.*

190 October 19. Filed petition of "The Norwich & N. Y. Transportation Co." for leave to bond vessel, &c., in discharge of further liability.

October 19. Entered order to show cause why prayer of petitioner should not be granted and returnable November 7, 1866, at 12 m.

" " Copies of order for publication given to —— for petitioners.

November 7. Order of petitioners returned. Return ordered to lie over to November 12.

" 12. Hearing had on return of order to show cause, &c., argued and submitted. Decision reserved.

Decision filed; motion granted so far as to release vessel from further liability, claimant to give stipulation for value. See order entered.

1867.

January 29. Amended libel filed.
Process in this cause and all other causes against the same vessels laid over until March 27, 1867.

March 27. Process further laid over to April 3d, 1867.

" " Commissioner's report filed; value of vessel fixed at $70,000. Report confirmed.

" " The Norwich & N. Y. file claims and stipulation for costs, with stipulation for value of vessel as per order of court. Marshal's costs taxed and deposited as follows:

In this suit $562 03
In ten other suits in process was in hands of marshal, each $3.58 ..... 35 80

191 Clerk's and commissioner's fees on bonding paid by claimants 206 35

" " Order entered discharging vessel from custody and notice given to marshal.

April 10. Answer filed.

" 17. Exceptions to answer filed.

1868.

December 2. Cause called. Hearing continued and adjourned to 3d inst.

" 3. Hearing continued and adjourned to 4th inst.

" 7. Testimony closed. Argument of cause adjourned to day to be agreed upon.

Page No. 476. *Admiralty Register A. See Fol.* 215, *Printed Record.*

GEORGE PLACE *et al.* } H. C. PLACE, J. LANGDON WARD, by substitution.
vs.
THE S. B. CITY OF NORWICH, &c. } J. W. C. LEVERIDGE.

1869.

June 16 & 17. Cause argued by counsel. Briefs to be submitted. Decision reserved.

December 22. Decision rendered. Decree for libellant with an order of reference.

" 23. Decree entered.

1870.

March 3. Commissioner's report presented and filed. Order for confirmation, unless exception be filed within 10 days. Amount reported due, $9,977.80.

" 5. Samuel Slater & Sons, H. H. Sayle, O. H. Chase & Co., and the Slater Woolen Co., respectively, file petitions, praying that they be allowed to prove claims before commissioner and share *pro rata.* Order to show cause why prayer should not be granted entered, returnable March 9, 1870.

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" 9. Petitions of C. H. Kenyon, Nelson D. White, Charles Osgood & Co., filed to share proceeds.

1870.

March 26. E. L. Owen, proctor, files the petitions of various parties. Motion in reference thereto adjourned for one week.

April 14. Exceptions to commissioner's report filed.

" " Decision rendered on petitions allowing parties to proceed against stipulation, on file, &c. (See Order.)

" 20. Petition of J. & W. Slater filed. Order entered directing the petitioners — recover, and that it be referred to a commissioner to ascertain the amount due.

June 15. Exceptions argued and submitted.

" " Commissioner's report on petition of Charles Miles presented and filed.

" 28. Decision rendered. Exceptions overruled. Report confirmed.

" 29. Commissioner's reports on petitions of John Slater *et al.* and G. Winchester *et al.* presented and filed.

October 10. Claimants file petition praying for leave to produce testimony as to aggregate amount of claims against vessel and also as to value of vessel. Order to show cause granted, returnable October 22.

" 22. Hearing order to show cause. Petitioner's application denied. Order entered.

1871.

March 31. On consent being filed. Order entered for payment of marshal's costs on deposit. Order check drawn; receipt filed.

1872.

June 13. Petition of The Norwich & New York Transportation Co. relative to limitation of liability, filed.

July 19. Order to show cause entered, returnable 1st Wednesday, November, 1872.

193 United States Circuit Court, Eastern District of New York, in the Second Circuit.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

Pleadings to be found in "Exhibit I" (printed record circuit court). Bill of exceptions. (See index of Exhibit I.)

194 *Opinion of District Court.*

DECEMBER 31, 1875.

BENEDICT, J.:

This was a proceeding taken on behalf of the owners of the steamboat City of Norwich, to obtain the benefit of the provisions of the act of March 3d, 1851, limiting the liability of ship-owners. Upon

presenting the petition an order was made referring it to the clerk to ascertain the amount or value of the interest of the parties as owners of said vessel and her freight pending for the voyage upon which she was employed. The report having been made, exceptions were taken thereto, which, during the present month, have been presented to the court for determination.

By some of these exceptions the question is raised whether the value of the boat was to be ascertained as of a time after the collision and not before. In respect to this question it is sufficient to say, that it has been decided by the Supreme Court of the United States, in reference to this very collision, that the value of
195 the boat after the collision was the limit of the owner's liability (13 Wallace, 127). The exceptions to the report, on the ground that it was error to ascertain and report the value of the boat as it was after the collision, must therefore be overruled.

No error appears in determining that value to be the sum of $2,500. The vessel was sunk, and was of some value as she lay submerged. That value was properly ascertained by taking what she was proved to be worth after she had been raised, and deducting therefrom the expenses of raising her. The exceptions upon that subject must therefore be overruled.

Equally unfounded is the proposition that the expenses of raising the boat and the expenses of her subsequent repairs should be added to the aforesaid value. The exceptions, which claim that such expenses should have been added to the amount reported, are therefore also overruled.

The fact that this boat had been libelled by various parties seeking to enforce, by proceedings *in rem* their claims arising out
196 of this collision, in which action, a stipulation for value in the sum of $70,000 was taken and the vessel released, has been also relied on here; and it is contended that the value of the vessel, as fixed by the stipulation taken in the suits *in rem*, must be taken as her value for the purpose of this proceeding, and furnish the limit of the owner's liability. The question here raised was passed on by this court when the order of reference was made. I can only repeat here, that the value fixed in the stipulation for value taken in the suits *in rem* was the value of the vessel at the time of her seizure in those actions. It did not pretend to be her value immediately after the collision; moreover, that stipulation was taken by virtue of the general powers of a court of admiralty, and not under the statute. (See the stipulation, 1 Ben., 103.) The practice of taking such a stipulation, adopted in the case of this vessel, has so far proved convenient, and has since been resorted to in several cases, without objection made. I see no reason for rejecting the
197 practise arising out of the law since declared by the Supreme Court. (13 Wallace, 127.) It proves a great convenience to parties to be able to give such a stipulation for value under the admiralty rules, and thus obtain immediate possession of the vessel, although it be intended afterwards to take proceedings to obtain the benefit of the statute. A stipulation so given holds good until the actions in which it was given are made ineffectual by means of pro-

ceedings taken under the statute, which proceedings, when concluded, afford foundation for the discharge of the stipulation for value. In no other respect do the two proceedings have any connection with each other, and the amount for which the stipulation for value was given in the suits *in rem* is wholly immaterial in a proceeding taken under the statute. In cases of maritime abandonment, under the general maritime law, neither the seizure nor a judicial sale of the ship, procured in opposition to the owner, but without contestation on his part, had any effect in determining the limit of the owner's liability, or prevented a resort to abandonment. (Trib.
198 of Commerce, Marseilles, 1828; do. Aix, 1825; Puget, Droit Maritime, vol. 2, page 412.) Nor would the case be changed if such a stipulation for value, as was taken for this vessel in the actions *in rem*, be deemed to be the substitute for the ship herself in court, and to which resort might be had in this proceeding; for it is plain that nothing in the stipulation itself estops the owners from showing what was the value of the ship at the time of the collision; and it is certain that the court would have power to require only so much of the amount of the stipulation to be brought into court as would be necessary to discharge the owners from their liabilities, and upon the bringing in of such part the court could direct the stipulation to be cancelled. The exceptions raising this question are therefore overruled.

No freight was saved. The freight then pending was entirely lost. The exceptions on this subject are therefore overruled.

The remaining and main question to be considered is whether the amount of money paid the owners by insurance com-
199 panies in performance of their policies of insurance upon the boat is to be taken as forming part of the value within the meaning of the statute. The facts bearing upon this question are that the boat was so injured by the collision that water rushed into her hull, whereby the flames were driven out from her fires, and she at once commenced to burn, and was to a great extent consumed before she sunk.

There was an insurance upon her against fire, on which the owners have secured the sum of $49,283.07, and this money, it is insisted, must be accounted for by the owners before they can be held to have complied with the statute. The insurance was reported by the commissioner, and he declined to include that sum in his report. I am of the opinion that his conclusion is right.

It might be said that this question had been removed from the case by the form of the order of reference, which was settled with care upon notice, and which confines the inquiry to the value of the vessel.
200 But I do not rest my decision upon that point, nor do I consider the question to have been disposed of by the decision of the Supreme Court of the United States, where the value of the vessel alone is spoken of as the limit of the owner's liability. The words, "value of the vessel," have doubtless been thus used without any reference to the question of insurance money, and the most that can be said is that the use of those words by the Supreme Court, and in the order of reference, shows that the question under consideration here

did not present itself as a question to be raised. Indeed, the language of the statute seems to render it impossible to raise such a question. Plainly, the words of the act do not cover the insurance money, and the absence of any allusion to insurance is significant. It is difficult to believe that such money would not have been distinctly mentioned, if there had been any intention to include it. It is, nevertheless, argued that the right of action of those freighters attached at the instant of the collision by reason of the negli-
201 gence whereby a collision resulted, and put it out of the power of the boat to carry and deliver the goods; that the value of the boat, at the time of the attaching of the liability,—that is, at the blow, and before the fire—is, therefore, the limit of the owner's liability; that any assignment made in pursuance of the statute would relate back to this time, and cast upon the freighters the risk of all subsequent perils; and that to the freighters must also be transferred all claims and rights of action arising from or out of the vessel by reason of any occurrence subsequent to the attaching of the liability; that the owners, at the instant of the collision, became trustees of the vessel for those who suffered damage by reason of the negligence, and any compensation or indemnity received by the owners is received for the benefit of the sufferers, and must, therefore, be accounted for in a proceeding like this.

But with this argument there are two difficulties. In the first place, the fire was part of the original disaster, and not a sub-
202 sequent occurrence. It was in this instance a necessary result of the blow. It is impossible, therefore, to separate the fire from the collision, so as to say that the risk of fire was upon the freighters. All that was left in existence by the blow of a colliding schooner was a vessel at once to be burned up and sunk from the necessities of the case. The value of such a vessel consists in the value remaining after the fire and sinking, and that value the sufferers have by the report under consideration.

In the second place, the amount received for the insurance did not arise from or out of the vessel, but out of certain contracts of indemnity made by the owners of the vessel, to which contracts the freighters were not parties. Those contracts were not, and, without the consent of the insurers, could not be, transferred to the freighters, nor does the statute make any provision for such a transfer. The assignment provided for by the statute, if possible to be made after the collision and before the fire, would pass no right of action
203 upon the policies of insurance, but would simply determine the interest of the insured in the property and discharge the insurer from the risk. Moreover, the law does not compel the ship-owner to take the benefit of the statute. He may elect whether or no to take proceedings to limit his liability, and until such election is made what interest can the freighters have in the vessel?

This question, although new in this country, because the statute is recent and has seldom been resorted to, is, in truth, an old question, long considered as settled in other lands. It cannot be doubted that our statute limiting the liability of ship-owners was intended, so far as it goes, to confer upon the American ships the benefit of

the law of abandonment, long recognized as part of the general maritime law among the maritime nations of the Continent, and so the Supreme Court declared (13 Wallace, 121, 127). In respect to the question under consideration, I see no difference in prin-
204 ciple between a proceeding under our statute and one under the general maritime law. Certainly, the words of the statute make no difference in favor of the freighters. The exercising of the right of abandonment under the maritime law has often brought up for consideration the question whether the owner must surrender insurance money in order to limit his liability by an abandonment; and it appears to be the settled law that in such a case a surrender of the insurance is not required.

Says Camnout (Dictionaire de Droit Maritime, title Abandon Maritime, § 54): "So, if the ship-owner has judged it prudent to effect insurance by means of a premium, more or less in amount, which he has paid, it is evident that the charterer and the shippers cannot take from him the fruit of a wise forethought, and receive the advantage of a contract to which they are strangers." The possibility of fraud which, upon this argument, has been urged as a rea-
205 son for requiring a surrender of the insurance, is considered and rejected by the same authority. (Dict. Droit Mar., title Abandon Maritime, § 55.) So also it has been adjudged (Aix., 8th Feb., 1832), "that the ship-owner, who, in order to free himself from loans contracted by the master during the voyage, abandoned the ship and freight, is not bound also to abandon the product of insurance effected upon the ship." The same was adjudged at Rennes, Aug. 12, 1822. (See also Boulay Paty, vol. 1, p. 297.) The Code de Commerce is, in substance, a declaration of the general maritime law, and section 216 of the Code has been adjudged to be identical with the rule of the maritime law as delared by the ordinance. The construction given to the code affords, then, a plain indication of the intent of our statute, which, as the Supreme Court has justly remarked, was passed in the light of the law existing in other countries, including the amendments of the law of France in 1841.
206 And it was never supposed that either the ordinance or the Code de Commerce compelled a ship-owner to surrender his insurance money in order to effect a maritime abandonment. In 1841 the effort was made in France to amend the Code de Commerce so as to require a surrender of the insurance, as well as of the ship's freight. The considerations affecting both sides of the question were then pointed out and discussed, and the amendment was rejected, with the declaration that by the existing provision of the Code the ship-owner is not bound to account for the ship's insurance in order to effect the maritime abandonment. (Ponget, Droit Mar., vol. 2, p. 415–419.)

It must be said that some of the considerations, then urged in favor of the rules as declared, have a greater force in France than here, because of the provisions of the code, which forbid insurance upon the freight, and thus, by rendering it impossible for the ship-owner to protect himself against all risk of loss; in a measure
207 protect the freighter against collusion. Still, the weight of

the argument appears to be greatly upon the side of the rule as declared, and such without doubt was the law, in the light of which our statute of 1851 was enacted, and the rule of the maritime law must be considered as having been intended to be adopted by that statute. The exceptions upon this question must, therefore, be overruled.

I have now considered all the questions raised by the exceptions which seem to be of sufficient importance to be noticed. I do not consider the point now first made in this court, that the statute of 1851 cannot be taken advantage of by a corporation, for the reason that the Supreme Court of the United States has, in respect to these same petitioners, plainly declared them to be entitled to the benefit of the act. It is true that no allusion is made, in the opinion of the court, to the fact that a boat was owned by a corporation; but that fact was proved, and the question can hardly be
208 supposed to have been overlooked.

Let an order be drawn in accordance with this opinion.

Findings of fact to be found in "Bill of Exceptions," from page 7 to 12.

Conclusions of law to be found in "Bill of Exceptions," from page 12 to 21.

Opinion of circuit court to be found in "Bill of Exceptions," from page 21 to 31.

209 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second circuit, held at the United States court-rooms in the city of Brooklyn, on the 29th day of June, A. D. 1882.

Present: Hon. William J. Wallace, circuit judge.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

The appeal of George Place and Charles Place, also the appeal of Charles D. Bigelow, survivor of the firm of Bigelow and Trask; also the appeal of William A. Wright, Samuel Hemingway, William Betsworth, William W. Robertson, Albert V. Eldrige, Horatio Nichols, Rober Francis, James A. Van Brunt, and Henry L. Slaight, owners of the schooner General S. Van Vliet, and Dan Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, owners of
210 the cargo laden on board of said schooner, from the decree of the district court of the United States for the eastern district of New York, in the above-entitled cause, made and entered on the fourth day of January, 1879, coming on to be heard, and having been duly argued by the advocates of the respective parties, and due deliberation being thereupon had—

Now, on motion of J. W. C. Leveridge, proctor for the above-named petitioners and appellees—

It is ordered that the said decree of the said district court of the United States for the eastern district of New York be, and the same is hereby, in all things affirmed.

And it is further ordered that the balance of the monies paid in by the petitioners now remaining in the registry of this court after payments under orders heretofore made, and after payments made under the decree of the said district court, be paid and distributed by the clerk of this court, as follows:

To the petitioners, the said appellees, or to their proctor, the sum of one thousand and eight $\frac{41}{100}$ dollars, being the amount of
211 their costs in the said district court, including commissioner's fees, as taxed by the said clerk on the 15th day of November, 1878.

To the several parties, appellants, who have appeared and proved their claims in said district court, or to their proctors, respectively, their bills of costs and expenses, other than clerks' costs, which are specified in the said decree of the said district court, as the same were taxed by the clerk of the said district court on the said 15th day of November, 1878, as follows:

To George Place and Charles Place, libellants, or their proctor, fifty-four $\frac{37}{100}$ dollars.

To Charles D. Bigelow and George L. Trask, libellants, or their proctors, forty dollars.

To Wm. A. Wright, Samuel Hemingway, William Betsworth, William W. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, libellants, and to Dan. Smith, Jesse Ludington, John B. Ludington, & Jesse Smith, libellants, or their proctor, forty-two $\frac{64}{100}$ dollars.

And it is further ordered that out of the remainder of said money, after paying the sums aforesaid, the said clerk pay
212 to the several parties who have so proved their claims as aforesaid their proportion of the balance of the sum so remaining in said district court, as specified in said decree, as follows:

To George Place and Charles Place	$26 85
To William A. Wright, Samuel Hemmingway, William Betsworth, William W. Robertson, Alfred V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight	67 65
To Dan. Smith, J. Ludington, John B. Ludington, and Jesse Smith	6 46
To Charles D. Bigelow & George L. Trask	13 97

And it is further ordered that the said petitioners, appellees, recover against the appellants and their sureties their costs in this court on said appeal as taxed, amounting to the sum of two hunhundred and twenty-six dollars and sixty-three cents.

And it is further ordered that Ebenezer Roby and John A. Greene, the sureties for the appellants, George Place and Charles Place, and James A. Van Brunt, and Charles P. Raymond, the sureties for the appellants, William A. Wright, Samuel Hem-
213 ingway, William Betsworth, William W. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, owners of the schooner General S.

Van Vliet, and also Dan. Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, owners of the cargo laden on board of said schooner; George W. Randall and A. F. Kindberg, the sureties for the appellant, Charles D. Bigelow, survivor of the firm of Bigelow and Trask, forthwith pay to the proctor for the petitioners and appellees the amount of said costs in this court, with the interest thereon from the thirtieth day of March, 1881, or that in default thereof, and unless an appeal be taken from this decree, they show cause at a circuit court to be held at the United States court-rooms, in the city of Brooklyn, on the first Wednesday of June, 1881, at the opening of the court on that day, or as soon thereafter as counsel can be heard, why a summary judgment should not be entered against them for the amount of their respective stipulations, and why execution for the amount of their said stipulations should not
214 issue against their goods, chattels, and lands.

And it is further ordered, adjudged, and decreed that the petitioners and appellees, The Norwich and New York Transportation Company, owners of the said steamboat or vessel "City of Norwich," her tackle, &c., and the said steamboat or vessel, and their sureties, and stipulators, be, and they are hereby, forever discharged of and from all and every claim and demand whatsoever arising from or growing out of the collision and fire in the petition in this matter mentioned, and that the libellants in each and every of the suits already commenced in the said district court and elsewhere against said steamboat or vessel, her tackle, &c., or against the said The Norwich and New York Transportation Company, and specially George Place, Charles Place, Charles D. Bigelow, and George L. Trask, William A. Wright, Samuel Hemingway, William Betsworth, William W. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt and Henry L. Slaight, owners of the schooner General S. Van Vliet, and Dan. Smith, Jesse Ludington,
215 John B. Ludington and Jesse Smith, owners of the cargo on board of said schooner General S. Van Vliet, James H. Diggles, Thomas D. Mason, and Ansel L. White and Merwin & Bray, and all and every other person or persons claiming any loss or damage occasioned by reason of the said collision and fire in the said petition mentioned, be, and they are hereby, perpetually enjoined from the further prosecution of their and each of their said suits, or of any claim arising from or growing out of said collision and fire, against the said petitioners and appellees, The Norwich and New York Transportation Company, owners of the said steamboat or vessel "City of Norwich," or against their stipulators or sureties, or against the said steamboat or vessel City of Norwich, her tackle, &c.

Saving and excepting, however, from the effect of said injunction the right of any of the said libellants or plaintiffs in any such action to proceed therein for the collection of any costs which he or they may be entitled to recover in said action, and for no other purpose whatsoever.

WM. J. WALLACE.

216 (Endorsed:) Circuit court of the United States, eastern dis-

trict of New York, in the second circuit. In the matter of the petition of The Norwich and New York Transportation Company. Decree. J. W. C. Leveridge, proctor for petitioner- & appellees, No. 22 Duane St., New York city. Filed & entered the 3d day of July, 1882.

217 Circuit Court of the United States, Eastern District of New York.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

To the Honorable the Supreme Court of the United States:

The appeal of George Place and Charles Place, Charles D. Bigelow, survivor of the firm of Bigelow and Trask, and William A. Wright, Samuel Hemingway, William Betsworth, William W. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, owners of the schooner General S. Van Vleit, and also Dan. Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, owners of the cargo laden on board of said schooner, General S. Van Vleit, appellants, respectfully showeth:

That on or about the ninth day of May, 1866, the above-named appellants, William A. Wright *et al.*, exhibited their libel in
218 the district court of the United States for the district of Connecticut, against The Norwich and New York Transportation Company, the petitioners herein praying, among others things, that a monition in due form of law issue, and a warrant of attachment issue against the goods and chattels of said company, and that the court decree payment to said libellants the damages they sustained by reason of the collision set out in said libel, which is the same collision referred to in the petition herein, such damages amounting in the aggregate to the sum of thirty thousand dollars.

Thereupon process issued out of said court, and the steamer City of New York, belonging to said company, was attached by the the marshal; and they (the petitioners herein) appeared for her, and by filing a proper stipulation in the sum of thirty thousand dollars, her value as agreed, obtained her release.

That the Norwich and New York Transportation Com-
219 pany thereafter filed exceptions to the above-named libel, and asked that it might be amended in certain respects.

That afterwards, and on the second Thursday of September, 1866, the aforesaid libellants duly filed their amended libel in the district court, which also sets up and claims damages to the amount of thirty thousand dollars against The Norwich and New York Transportation Company by reason of said collision.

That thereupon said company duly filed in court their answer to said amended libel, wherein it denies all fault on the part of the steamboat City of Norwich, and all liability of their or said steamboat to respond to the libellants for the damages above mentioned, and prays that the libel be dismissed with costs, as by reference to said libels and answer will more fully appear.

That the issue thus formed, came duly on to be heard before the Honorable William D. Shipman, judge of the district court, at the term of the court held at New Haven, commencing on the
220 second Tuesday of September, 1866, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the said respective parties, and the said judge, having advised thereon, did, at the term of said district court, held on the fourth Tuesday of November, 1866, make a decree or sentence in said cause, whereby it was decreed that the libellants recover their damages, respectively, for the collision mentioned in the libel, and that it be referred to Alfred Blackman, Esq., a commissioner, to take testimony of the amount of such damages, and report the same to the court. Thereupon a reference was duly had to said commissioner, who, after taking the testimony adduced by the respective parties, duly reported to the court.

That thereafter, and on or about the 23d day of April, 1867, a final decree was made by said district court, whereby, after reciting the reading and filing of said commissioner's report, it was de-
221 creed that The Norwich and New York Transportation Company pay to the libellants, owners of the schooner General S. Van Vleit, the sum of $19,975.00, and interest from the 18th day of April, 1866, and to the libellants, the owners of the cargo laden on board said schooner, the sum of $1,921.63, and interest thereon from the 18th day of April, 1866, and costs to be taxed, to which extent the report of said commissioner was confirmed, making in the aggregate the sum of $23,657.28, costs being taxed at $206.60.

And after said last-named decree was pronounced The Norwich and New York Transportation Company moved the court for an appeal from said decree to the circuit court of the United States then next to be holden in said district of Connecticut, which was allowed, and thereupon a motion, of which the following is the substance, by agreement of the parties, was filed in court and allowed as a part of the record of said cause prior to said final decree: "The Norwich and New York Transportation Company allege
222 that at the time of said collision the steamer City of Norwich had on board a large and valuable cargo of merchandise or freight belonging to various parties, and much larger in amount than the whole amount of the value of the interest of the respondents in said steamer and her freight then pending; and that the damages sustained by all of said parties by said collision, including the libellants, was much greater in amount than the value of the interest of the respondents in said steamer and her freight then pending; and that proceedings *in rem* have been commenced on behalf of said parties against said steamer in the district court of the United States for the eastern district of New York, for the recovery of said damages. They therefore pray that they may be permitted to show by proper evidence the whole amount of damages sustained by all of said parties, and the value of said steamer and her freight then pending; and that the decree of this court may be so framed as to give the libellants such part or proportion of such amount of
223 damages sustained by them as determined by the court bears

to the whole amount of the damages sustained by all parties by said collision," which motion was by said final decree denied.

That on the 23d day of August, 1866, a libel was filed in the district court of the United States for the eastern district of New York by George Place and Charles Place against said steamboat City of Norwich, to recover $8,000, damages they sustained by reason of the facts set up in said libel, being founded on the collision before mentioned herein, whereupon process duly issued out of said last-named court at the instance of said libellants, by virtue of which the steamboat City of Norwich was seized by the marshall of the eastern district of New York.

That The Norwich and New York Transportation Company duly intervened and claimed said steamboat and made application to this court that they might be declared as entitled to the benefit of the act of Congress of the United States, entitled "An act to limit
224 the liability of ship-owners, and for other purposes," passed on the third of March, 1851, and that the steamboat City of Norwich, her apparel, &c., and freight might be appraised, &c. That such proceedings were thereafter had that a commissioner duly appointed by the court for that purpose on testimony produced wholly by said Norwich and New York Transportation Company, and none being offered of any other value on the 11th day of March, 1867, made his report that the value of said steamboat City of Norwich was $70,000, which report was filed on the 23d day of March, 1867. Thereupon the said Norwich and New York Transportation Company duly entered into a stipulation with sufficient sureties, which stipulation was duly filed in said court on the 29th day of March, 1867, such stipulation thereupon taking the place of said steamboat City of Norwich, she was then and there discharged from custody. That the last-mentioned stipulation was given and it is therein so expressed not only for the benefit of the said George Place
225 and Charles Place, but also for the benefit of all persons and parties who might by the proceedings in this court show themselves entitled to liens upon the said vessel by reason of such collision, &c., among whom are these appellants.

That after the before-mentioned decree of the district court of Connecticut in the suit there brought by some of these appellants as aforesaid was pronounced, the Norwich and New York Transportation Company appealed to the circuit court of the United States for said district, as has been herein stated, and such proceedings were thereafter duly had that a decree was, on the 20th day of September, 1870, made by said circuit court whereby the decree of the district court of Connecticut was in all things affirmed with costs.

That thereafter the said Norwich and New York Transportation Company appealed from the decree of the aforesaid circuit court of Connecticut to the Supreme Court of the United States, wherein such proceedings were duly had that at the December term, 1871, of said Supreme Court a decision was rendered the substance
226 of which was that the decree of the circuit court will be affirmed, with directions to suspend further proceedings thereon until the respondents (the petitioner in this court) shall

have had such reasonable time, as the circuit court may deem sufficient, for taking the proper proceedings in the district court for the eastern district of New York for apportioning the damages sustained by the various parties in this case. The costs in this court and the courts below to be equally divided between the libellants and the respondent, also process against the stipulators to be suspended to abide the event of the suit.

That the mandate of the Supreme Court was duly remitted to the said circuit court of Connecticut, and a decree there entered conformable to the decision aforesaid, which suit is the same as that referred to in the petition herein as having been brought by William A. Wright and others against the petitioners, and these appellants, for greater certainty, pray leave to refer to all pro-
227 ceedings in said suit last named, as well as those in the Supreme Court and the records therein, and the records and proceedings in the circuit and district courts of Connecticut aforesaid.

That thereafter, and on or about the thirteenth day of June, 1872, the said Norwich and New York Transportation Company, sole owners of the steamboat City of Norwich, filed their petition in the district court of the United States for the eastern district of New York, wherein the facts hereinbefore mentioned as being averred in said petition are alleged, and also that the trial of the suit of George Place and Charles Place against said company before mentioned, and the other suits commenced against said company, growing out of the same matter, has been had, and decrees entered against the company on the 20th day of December, 1869, in favor of the respective libellants, with directions for a reference to ascertain the damages, which were duly ascertained, and final decrees entered,
228 and praying the limitation of liability provided for in the third and fourth sections of the act, entitled "An act to limit the liability of ship-owners, and for other purposes," passed March 3d, 1851, and that an appraisement might be had of the value of their interest, as owners in said steamboat, and her freight pending; and that upon paying said amount into court or giving stipulation therefor they might, with their sureties, be discharged from all liability under the stipulation theretofore given as above mentioned, and the same cancelled; that a monition might issue, citing all parties claiming damages by reason of said collision to appear and prove their claims, and that the further prosecution of all suits arising out of said collision might be restrained, and they might have such other and further relief as to the court might seem fit, to which petition reference is made.

That on the 19th day of July, 1872, an order was made by said court, citing all persons interested to appear on the third
229 Wednesday of November, 1872, and show cause why an appraisement should not be had in accordance with the prayer of said petition, and why the petitioners should not have such other, further, or different relief as might seem proper.

That these appellants, by their advocates and proctors, did duly appear in said court and show due cause why such order should not

be granted, viz., among other things, that an appraisement had long before been had as aforesaid, at which the value of said steamboat City of Norwich had been fixed at $70,000, at the instance of her owners, who were thereby precluded from changing it, and made objection against such motion; that nevertheless, and against the objection of these appellants, an order was made by said court in said proceedings, referring it to Samuel T. Jones, Esq., a commissioner of said court, to make the appraisement prayed for, and for the payment of the value, when ascertained, into court, or the giving of a stipulation therefor and staying the further prosecution of
230 the suits in said petition mentioned, among which was the one commenced by the appellants in said district of Connecticut aforesaid.

That afterwards said Samuel T. Jones died, and Edwin B. Husted, Esq., a commissioner of the same court, was also, against the objection of these appellants, appointed in his place, whereupon such proceedings were had that on the sixth day of January, 1875, said commissioner made and filed his report, wherein he reports the value of said steamboat City of Norwich at $2,500.

That on the 20th day of January, 1875, these appellants duly excepted to said report.

That by an order of said court, dated the 29th day of March, 1876, their exceptions were severally overruled, the commissioner's report confirmed, the petitioners were ordered to pay said sum of $2,500 into court within twenty days. A monition was directed to issue against all parties claiming damages by reason of the
231 collision aforesaid, citing them to appear by a day certain, and make proof of their claims, and restraining the further prosecution of the suits aforesaid, except in so far as respected the costs therein. All of which was against the objection of these appellants.

That thereafter a monition was issued as directed, and returned duly served, and such further proceedings were had that on the 15th November, 1878, a bill of costs was presented by and on behalf of the proctor for the said petition and taxed by the clerk, in and by which there was allowed to the said proctor for the said petitioner as docket fee of $20.00, and a fee or reference of 20.00 in the case of each claim presented and proven before the said commissioner, which said taxation on appeal by these appellants to the said court was affirmed by the judge thereof. A final decree was entered in said court on said petition, among other things directing the payment out of the aforesaid $2,500 paid into court to the petitioners or their attorney the sum of $990.41 as their costs, taxed by the clerk,
232 which taxation was thereby confirmed, and discharging the petitioners from all liability growing out of said collision, and discharging them and the stipulators from all liability or the stipulation before mentioned for $70,000, and restraining these appellants from the further prosecution of their suits against said petitioners in the district of Connecticut before mentioned, except for the collection of any costs they might be entitled to recover therein.

And that after said final decree your petitioners duly appealed

therefrom to the circuit court of the United States for the eastern district of New York, in the second circuit, and the said cause was removed thereby into the said circuit court and tried anew upon said pleadings and proofs, and such other proofs as were therein adduced, and such proceedings were therein had that afterwards, to wit, on the 3d day of July, 1882, the said circuit court made a final decree in said matter, whereby it was decreed that the said
233 decree of the district court be in all things affirmed with costs, and that said appellee have execution.

And these appellants are advised and insist that said last-named decree, and the various interlocutory decrees and orders and commissioner's report made in the matter of this petition aforesaid, are erroneous inasmuch as said petitioners are not entitled to a reappraisement of said City of Norwich, &c.; and her value should not have been found at a time subsequent to the collision, but at a time just prior thereto; and no deduction should have been made of the expenses of raising said vessel; and the various sums of insurance against fire upon the said steamboat at the time of the collision, which were afterwards collected by her owners, should have been included in the estimate of the amount or value of their interest as owners in the said steamboat for the voyage; and her value should not have been found at a sum less than $70,000; and the petitioners are not entitled as against these appellants to any such
234 decree; and these appellants, for these and other reasons, appeal from the whole and each and every part of said decree.

Wherefore these appellants appeal from the whole of said decree of said circuit court, and especially from the particulars above specified to the Supreme Court of the United States, and respectfully pray that the said decree and petition, depositions, evidence, and proceedings in said cause or matter may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made as to said Supreme Court shall seem just and equitable.

Dated New York, August 3d, 1882.

GEORGE PLACE,
CHARLES PLACE,
CHARLES D. BIGELOW, &c.,
By J. L. WARD, *Att'y.*
WILLIAM A. WRIGHT *et al.*,
By R. H. HUNTLEY, *Att'y.*

J. LANGDON WARD,
Proctor for Appellants, Charles Place et al.
RICHARD H. HUNTLEY,
Proctor for Appellants, Wm. A. Wright et al.

235 (Endorsed:) Circuit court of the United States, eastern district of New York, in the second circuit. In the matter of the petition of The Norwich & New York Transportation Company. Petition of appeal. J. Langdon Ward, proctors for appellants, Place

& Bigelow *et al.* R. H. Huntley, proctors for appellants, Wright *et al.* Due service of a copy of the within is hereby admitted. Dated N. Y., Aug't 7th, 1882. J. W. C. Leveridge, proctor for petitioners. Filed August 9th, 1882.

236 Circuit Court of the United States of America for the Eastern District of New York, in the Second Circuit.

In the Matter of the Petition of THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

Know all men by these presents, that we, Ebenezer Roby, of the city of Brooklyn, county of Kings; Charles E. Bigelow, of the city of Brooklyn, county of Kings, and James A. Van Brunt, of the city of Brooklyn, etc., are held and firmly bound unto the above-named The Norwich and New York Transportation Company in the sum of five hundred dollars, to be paid to the said The Norwich and New York Transportation Company; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 3d day of August, in the year of our Lord one thousand eight hundred and eighty-two.

237 Whereas George Place and Charles Place, and Charles D. Bigelow, survivor of Bigelow and Trask, William A. Wright, Samuel Hemingway, William Betsworth, William W. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, and Henry L. Slaight, owners of the schooner General S. Van Vliet, and also Dan Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, owners of the cargo laden on board of said schooner General S. Van Vliet, appellants, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the foregoing-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

EBENEZER ROBY. [SEAL.]
CHAS. E. BIGELOW. [SEAL.]
JAMES A. VAN BRUNT. [SEAL.]

238 Sealed and delivered and taken and acknowledged, this 3d day of August, 1882, before me.

[SEAL.] A. H. GLEASON,
Notary Public, New York Co.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Ebenezer Roby, being duly sworn, deposes and says: That he resides in the city of Brooklyn, and that he is worth the sum of one thousand dollars over and above his just debts and liabilities.

EBENEZER ROBY.

Sworn to, this 3d day of August, A. D. 1882, before me.
[SEAL.]
A. H. GLEASON,
Notary Public, New York Co.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Charles E. Bigelow, being duly sworn, deposes and says: That he resides in the city of Brooklyn, and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

239 CHAS. E. BIGELOW.

Sworn to, this 3d day of August, A. D. 1882, before me.
[SEAL.]
A. H. GLEASON,
Notary Public, New York Co.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

James A. Van Brunt, being duly sworn, deposes and says: That he resides in the city of Brooklyn; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

JAMES A. VAN BRUNT.

Sworn to, this 3d day of August, A. D. 1882, before me.
A. H. GLEASON,
Notary Public, New York Co.

240 (Endorsed:) U. S. circuit court. In the matter of the petition of The Norwich and New York Transportation Company. Bond on appeal. Approved August 9th, 1882. Wm. J. Wallace. Filed August 9th, 1882.

241 UNITED STATES OF AMERICA, *Eastern District of New York,* } ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages numbered one (1) to two hundred and twenty (220), inclusive, contain a true and complete transcript of the record and proceedings had in said court In the matter of the petition of The Norwich and New York Transportation Company, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 29th day of September, in

the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the said United States the one hundred and seventh.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

242 By the Honorable William J. Wallace, judge of the circuit court of the United States for the eastern district of New York, in the second circuit, to The Norwich and New York Transportation Company:

Whereas George Place, Charles Place, Charles D. Bigelow, survivor of the firm of Bigelow & Trask, William A. Wright, Samuel Hemingway, William Betsworth, William M. Robertson, Albert V. Eldridge, Horatio Nichols, Robert Francis, James A. Van Brunt, Henry L. Slaight, Dan. Smith, Jesse Ludington, John B. Ludington, and Jesse Smith, libellants and appellants, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said Norwich and New York Transportation Company against the above-named libellants and appellants, and have filed the security required by law:

You are therefore hereby cited to appear before the Su-
243 preme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Brooklyn, in the eastern district of New York, in the second circuit, the 9th day of August, 1882, and the Independence of the United States the one hundred and sixth.

WM. J. WALLACE,
Circuit Judge.

244 [Endorsed:] U. S. circuit court. In the matter of the petition of The Norwich and New York Transportation Company. Citation. J. Langdon Ward, proctor for appellants, Place & Bigelow *et al.* R. H. Huntley, proctor for appellants, Wright *et al.* Due service of a copy of the within is hereby admitted. Dated N. Y., Aug. 12, 1882. J. W. C. Leveridge, pr. for petition-.

Endorsed on cover: E. New York C. C. U. S. No. 328. George Place and Charles Place, and Charles D. Bigelow, survivor of Bigelow and Trask, William A. Wright *et al.*, claimants of the schooner "General S. Van Vliet," and Dan. Smith *et al.*, claimants of the cargo, appellants, *vs.* The Norwich and New York Transportation Company. Filed 9th October, 1882.

Office Supreme Court U. S.
FILED.
OCT 28 1885
JAMES H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1885.

No. 62.

GEORGE PLACE and CHARLES PLACE, and CHARLES A. BIGELOW, Survivor, &c., et als., *Appellants,*

vs.

THE NORWICH AND NEW YORK TRANSPORTATION CO.

BRIEF FOR APPELLANTS PLACE & BIGELOW.

J. LANGDON WARD,

Advocate.

C. G. Burgoyne's "Quick" Print, 148-150 Centre St., N. Y.

Supreme Court of the United States.

GEORGE PLACE and CHARLES PLACE, and CHARLES D. BIGELOW, survivor of Bigelow & Trask, *et als.*,
Appellants,

vs.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY,
Appellees.

Brief of the appellants George and Charles Place, and Charles D. Bigelow, survivor of Bigelow & Trask.

STATEMENT OF THE CASE.

On the 18th of April, 1866, the steamboat "City of Norwich," owned by the appellees, collided with the schooner "General S. Van Vliet" while on a voyage from Norwich to New York. The collision was caused by the negligence of the steamboat. Within half an hour after the collision the steamboat took fire, her deck and upper works were burned off, and she sunk in about twenty fathoms of water.

These appellants were the owners of cargo on said steamboat to the amount of $12,000, which was wholly lost.

About the middle of August, 1866, the steamboat was raised and brought to Greenpoint, in the Eastern District of New York. On the 24th of August, 1866, and immediately after the arrival of the steamboat at Greenpoint, the appellants Place filed a libel against the said steamboat in the District Court for the Eastern District of New York to recover damages for the loss of their merchandise. On or before the 10th of September, 1866, the steamboat was attached under this libel, and on the 12th of September, 1866, the present appellees entered their appearance in the said cause, and filed a claim to the said steamboat.

On the 19th of October, 1866, the appellees filed in the said District Court their petition setting forth, among other things, the said collision and fire, the filing of the said libel and the seizure of the said steamboat by the Marshal of the said Court; that the said steamboat was freighted with a large cargo belonging to divers persons unknown to the petitioners, and that, in addition to the claim made by the said libellants, as they verily believed, other claims on behalf of the owners of other portions of said cargo would be made against them as owners of said steamboat, or against the steamboat herself, which claims, if established, would greatly exceed the value of said steamboat and of her freight pending at the time of said collision, fire and loss; that such collision and fire were occasioned and incurred without the design, neglect, privity or knowedge of the petitioners; and praying that they might be declared entitled to the benefit of the act entitled, "An Act to limit the liability of ship owners, and for other purposes," passed March 3d, 1851, that the steamboat and her freight might be appraised and that the petitioners might be authorized to give a stipulation with sureties according to the rules and practice of the Court for

such appraised value, such stipulation to be for the benefit of the libellants, in case they should establish the liability of said steamboat, and of all other claimants who might intervene and prove to be legally entitled to compensation for losses sustained by reason of said collision and fire, in proportion to the amount of their respective losses, and that thereupon the said steamboat, as well as her owners, might be discharged from all liability for all losses incurred by reason of such collision and fire, and for other and further relief.

Thereafter and on or about the 26th of January, 1867, an order was made on said petition, referring it to a commissioner to ascertain, appraise and report to the Court the then present value of the said steamboat, and directing that upon the coming in of the said report the said claimants give stipulation with sufficient sureties, according to the course of practice of the Court on the bonding of vessels in the amount so reported, and that such stipulation should be for the benefit of the libellants in case they should establish the liability of the said steamboat, and of all persons and parties who might by due proceedings in said Court show themselves entitled to liens upon said vessel by reason of such collision and fire ; and that upon the entering into and filing of such stipulation the said steamboat, her engine, &c., be discharged from all liability for losses and damage occasioned to all parties for whose benefit the said stipulation should be given ; and further providing that the libellants and all other persons and parties having liens on said steamboat for losses or damage by reason of such collision and fire should be bound by said order.

Thereafter and on the 22d of March, 1867, the Commissioner reported the value of the said steamboat to be $70,000, which said report was confirmed and thereupon, on the 29th of March, 1867, the appellees filed a

stipulation with sureties as required in that amount, and the said steamboat was delivered to them.

After the said steamboat had been seized by the Marshal under the said libel of the appellants Place, and while she was in the custody of the Court, and before the said appraisement was made and the said stipulation filed, the said steamboat was repaired by these appellees.

Afterwards the appellees answered the said libel of the appellants Place and numerous other libels which had been filed in said Court against the said steamboat, and the said causes were afterwards tried as one; said steamboat was decreed to be in fault and responsible for the damages of the libellants; interlocutory decrees were entered accordingly, and it was referred to a Master to compute the damages due to the several libellants, which was done, and his report thereon was duly confirmed but no final decrees were entered.

On the 13th of June, 1872, these appellees filed in the District Court for the Eastern District of New York a second petition setting forth substantially the same matters contained in the petition above mentioned, the commencement of divers suits against the petitioners *in personum*, and the filing of libels against the said steamboat for damages by reason of the collision and fire aforesaid, and that there were a large number of other claimants who had not instituted proceedings or suits, the total amount of all which claims exceeded the amount of the value of said steamboat and her freight pending at the time of such collision, fire and loss, *the filing of their previous petition and entry of the order therein, the appraisement of the steamboat and the giving of the stipulation by the said petitioners and discharge of the steamboat from custody as above mentioned;* that the value of the steamboat as reported by the Commissioner, and for which such stipulation had been given, was her value at the time of the said Commissioner's report after she had been repaired,

their appeal to this Court in the suit of Wright and others, and the determination of this Court that the liability of the said petitioners was limited, and the adoption of rules by this Court to govern the practice in such cases, and averring that by reason of such decision and rules they were entitled to and claimed the benefit of the limitation of liability provided in the third and fourth sections of the act entitled, "An act to limit the liability of ship-owners and for other purposes," passed March 3d, 1857, and praying that an appraisement might be had of the amount of the value of the interest of the said petitioners as owners respectively in such steamboat or vessel and her freight pending for the voyage upon which she was employed, and for which they were liable, and that upon the coming in of the report of the Commissioner, an order might be made for the payment of such valuation into Court, or for the giving of a stipulation by them, with sureties for the payment thereof into Court whenever the same should be ordered, and that, upon payment of such valuation into Court or upon the filing of such stipulation, the stipulation theretofore filed be canceled and the petitioners and their sureties be discharged from all liability thereunder.

Said petition prayed also for a monition and an order restraining further prosecution of all suits against the said steamboat or the petitioners.

On the filing of this petition and on the 19th of July, 1872, an order was made requiring all persons and parties interested to show cause before the said Court on the third Wednesday of November, 1872, why an appraisement should not be made "of the amount of the value of the interest of said petitioners as owners respectively, in said steamboat 'City of Norwich,' and her freight, pending for the said voyage," and enjoining the further prosecution of all or any suits against the said petitioners for or on account of the matters in the petition mentioned, which said order further pro-

vided for a notice to all persons interested by the publication of a copy of the said order in three newspapers therein specified, for fourteen days prior to the return thereof, and by mailing copies thereof to all parties interested named in said petition and schedules annexed, or whose names might thereafter be furnished to the Clerk.

Afterwards, on the fifth day of March, 1873, an order was made by the said Court referring it to one of the Commissioners of the Court to appraise the amount of the value of the said petitioners, as owners respectively, in such steamboat or vessel and her freight pending for the voyage upon which she was employed, and for which the said petitioners were liable, and directing that upon the coming in and confirmation of the report of said Commissioner an order should pass for the payment of such valuation into Court, or for the giving of a stipulation by the said petitioners with sureties for the payment thereof into Court whenever the same should be ordered; and enjoining the further prosecution of all suits against the said steamboat or the petitioners in respect to claims for damages occasioned by such collision and fire.

On the hearing before the said Commissioner, and before any evidence had been taken, these appellees objected to his proceeding on the ground among other things that the steamboat "City of Norwich" having already been appraised, the said Court had no jurisdiction to make further appraisement, and that the only jurisdiction the said Court had or could have in the premises was conferred by the bond already given to relieve said steamboat, and that said jurisdiction did not extend to that proceeding, but said objections were overruled.

On the reference before the Commissioner it was shown that after the steamboat had been raised and brought to New York she was worth $25,000, and that the appellees had paid $22,500 for raising her, it was

claimed that therefore her value as she was after the collision and before she was raised was $2,500.

It was also shown before the Commissioner that the appellees had received from divers insurance companies, as indemnity for the damage suffered by said steamboat on account of the said fire the sum of $49,283.07.

Thereafter and on the 5th day of January, 1875, the the said Commissioner reported the value of said steamboat to be $2,500, following therein what he said he understood to have been the decision of this Court in the case of Wright and others against these appellees (13 Wallace, 104). To this report these appellants excepted, among other things, for that said Commissioner was bound by the stipulation for value filed in this Court in the matter of the suits against the steamboat "City of Norwich," dated March 25, 1867, and should have reported the value of said steamboat at $70,000, and for that the said Commissioner should have ascertained and reported the value of said steamboat immediately subsequent to said collision and before the occurrence of the damage by reason of the fire or from other cause than said collision, and for that the said Commissioner should have added to the value reported by him the sum of $49,283.07 being the amount of insurance received by the petitioners for the loss and damage to said steamboat subsequent to the occurrence of the collision, and for that said Commissioner should have computed interest upon the amount of the insurance upon the said steamboat from the day of its receipt by the petitioners and added the same to the amount so reported by him as her value.

Thereafter, and on the 29th of March, 1876, by an order of the said Court, the said exceptions were overruled, the report of the said Commissioner was confirmed, and the petitioners were ordered to pay into Court the said sum of $2,500, the amount so reported by the said Commissioner, and a monition was directed

to issue against all persons claiming damages for any loss, destruction or injury occasioned by the collision and fire in said petition mentioned, and provision was made for the service thereof, and it was directed that upon the return of the said monition, it be referred to one of the Commissioners of the said Court to take proof of all claims which should have been presented in pursuance of such monition and to report thereon, and the further prosecution of all suits against the said petitioners or said steamboat was enjoined, except in so far as it respected the costs therein.

Afterwards, by an order entered on the 13th of April, 1877, on the return day of the said monition, an order was entered by the said Court reciting the appearance of certain claimants by their proctors, and directing that all persons and parties claiming damages for any loss, destruction or injury by the collision and fire in said petition mentioned other than those who had appeared as therein recited, should be, and they were thereby, declared to be in contumacy and default, and it was referred to a Commissioner of the said Court to take proof of the respective claims of the parties who had appeared, as therein recited, and to report thereon.

On the 13th day of February, 1878, the said Commissioner reported the amount of eighteen claims proved before him, aggregating $137,417.80, and thereafter said report was confirmed.

On the 15th of November, 1878, the Clerk of the said District Court for the Eastern District of New York taxed and adjusted in favor of the proctor of the appellees a bill of costs in said proceeding amounting to the sum of $1,083.16, in which was included the sum of $680, being a docket fee of $20 and a reference fee $20 on each of seventeen claims presented to and proved before the said Commissioner on the reference under the last mentioned order, to which taxation and allowance these appellees excepted, and appealed

thereon from the said Clerk to the said Court, but their exceptions and appeal were overruled and the said taxation and adjustment was affirmed by the said Court and thereupon, and on the 4th of January, 1879, a final decree was entered on the said last mentioned petition, apportioning among the several claimants who had proved their claims as above mentioned the remainder of the $2,500, paid into Court by these appellees, left after payment of said costs and the expenses of these proceedings, and amounting to the sum of $279.32 in proportion to the amount of their respective claims, and adjudging and decreeing that the appellees and the said steamboat were forever discharged of and from all and every claim and demand whatever arising from or growing out of the collision and fire in the said petition mentioned, and enjoining and restraining all persons claiming any loss or damage occasioned by reason of the said collision and fire in said petition mentioned, and from the further prosecution of their said suits or of any claim arising from or growing out of said collision and fire, against the said appellees and the said steamboat, saving from the effect of said injunction the right of any libellant or plaintiffs to proceed in their actions already begun for the collection of any costs which he or they might be entitled to recover in said action, and for no other purposes.

From this decree and from each and every of the various orders and proceedings on said petition these appellants and William A. Wright *et al.*, owners of said schooner "General S. Van Vliet," and of the cargo laden on board thereof, appealed to the Circuit Court of the United States for the Eastern District of New York. All the other claimants who had filed and proven their claims under said petition acquiesced in said decree and accepted the moneys awarded to them thereunder.

On the 24th of June, 1879, the appeal of the said appellants came on for hearing in the Circuit Court before

the Honorable WILLIAM STRONG, Justice of the Supreme Court of the United States, temporarily assigned.

On the 13th of October, 1879, the said Justice made and filed his findings of fact and conclusions of law on said appeal, to certain of which these appellants excepted, and thereafter and before the entry of any decree in the cause, the said Justice having resigned his office as Justice of the Supreme Court of the United States, by consent of all parties a bill of exceptions prepared by these appellants was signed and allowed by the Honorable WILLIAM J. WALLACE, Circuit Judge of the United States, of the Second Circuit, who thereafter and on the third day of July, 1882, entered a final decree on said appeal affirming in all things the said decree of the District Court for the Eastern District of New York, and directing that the balance of the moneys paid in by the appellees as above mentioned, then remaining in the registry of the Court, should be paid out and distributed as therein specified, and further decreeing that the appellees should be forever discharged of and from all and every claim and demand whatsoever arising from or growing out of the collision and fire above mentioned, and enjoining these appellants and every other person or persons claiming any loss or damage occasioned by reason of said collision and fire from the further prosecution of any suit or claim arising from or growing out of the said collision, against the appellees of the said steamboat "City of Norwich," or against their stipulators or sureties excepting for the collection of any costs which they might be entitled to recover.

And thereupon these appellees prayed an appeal from the said decree, and from each and every part thereof, and from the various interlocutory degrees, orders, and reports made herein to this Court, which was allowed.

Assignments of Error.

THE CIRCUIT COURT ERRED:

FIRST. In finding as matter of fact that "the fire was inseparable from the collision."

SECOND. In finding as matter of fact that the order for the appraisement of the amount of the value of the interest of the petitioners as owners respectively of said steamboat and her freight pending, was made *after* the issue of the monition, and the appearance of these appellants herein.

THIRD. In finding as matter of fact that the value of the interest of the petitioners in the steamboat as she was immediately after the disaster was $2,500, and no more.

FOURTH. In finding, as a conclusion of law, that "the District Court was correct in determining that the value of the steamboat immediately after the collision and fire, as she was then lying at the bottom, together with her pending freight, is the extreme measure of the owners' liability and is the amount to be apportioned."

FIFTH. In finding, as a conclusion of law, "that the petitioners in this case who were the owners of the steamboat, are not bound to pay into the registry of the Court the sum they received for insurance."

SIXTH. In finding, as a conclusion of law, that these appellants should be restrained from the further prosecution of their suits against the steamboat or against the stipulators for value in those cases.

SEVENTH. In finding, as a conclusion of law, that the taxation of a docket fee of twenty dollars and a fee on reference of twenty dollars in favor of the proctor for the petitioners, appellees, for each claim presented to and allowed by the Commissioner on the reference to take proof of claims, was correct.

EIGHTH. In finding, as a conclusion of law, that if the appraisement of the value of the interest of the appellees, as owners in the steamboat, had been made as of the interval after the collision and before the fire, the result would have been the same as that fixed by the Commissioner.

NINTH. In finding, as a conclusion of law, that after the collision and before the fire the steamboat was worth no more than she was after she had sunk.

TENTH. In finding, as a conclusion of law, that the fire was as much a part of the original disaster as was the breaking of the hull by the impingement of the schooner.

ELEVENTH. In finding, as a conclusion of law, that if the petitioners, appellees, after the collision and before the fire, had transferred their interest in the said steamboat and her freight to a trustee for the sufferers he would have taken only a vessel worth no more than she was at the bottom of the sound.

TWELFTH. In affirming the order of March 5, 1873, for an appraisment of the amount of value of the interest of the petitioners, appellees, as owners respectively in the steamboat and her freight pending, etc.

THIRTEENTH. In not reversing the decree of the District Court as to these appellants, and in not dismissing the petition herein as to them.

Brief of the Argument.

I. Neither the District nor the Circuit Court had jurisdiction to entertain the petition in these proceedings, nor by order or decree thereon to perpetually restrain these appellants from proceeding to decree under the libels filed by them.

(*a*) On the 19th of October, 1866, these appellees had filed in the District Court, in the cause instituted by the appellants Place, a petition identical in large part and in all essential features with the petition herein (Record, pp. 27, 92, 34).

This petition was in all respects sufficient under the Act of 1851 to place the right of the petitioners to a limitation of their liability before the Court and to invest it with jurisdiction to proceed thereon to decree.

The Scotland, 105 U. S., 24–33.

The District Court thereupon proceeded to act upon that petition in all respects conformably to its prayer, except that it did not decree plenary absolution to the petitioners from liability for damages; it did, however, cause an appraisement to be made of the offending *res*, which was not objected to by the appelles, who thereupon gave the usual stipulation therefor, and received the steamboat discharged from all liens and claims arising out of the collision.

The stipulation given as above conformed in all respects to the stipulation required by the rules of this Court for proceedings in limitation of liability.

Record, pp. 30–32.

By the order of the Court directing it to be given it was declared to be binding on every person having a

lien upon the steamboat arising out of the collision in question.

It is manifest that by this proceeding the appellees submitted their rights to the Court and thereafter were bound to abide by its decision in that regard, or to review its action in a proper manner by appeal.

Certainly the administration of justice could not more surely be brought into disrepute than by permitting a party who has invoked the action of a Court, when an adverse determination is imminent, to commence a second proceeding identical in character before the same Court, and stay his adversary from further prosecuting the original cause.

(*b*) Even conceding for the moment the regularity of the petition, the injunction order made thereon restraining these appellees from prosecuting their libels was without authority, and was wrong.

Those libels were *in rem*. They were instituted to enforce liens against the offending steamboat. No question of the personal liability of the appellees, aside from their interest in the steamboat, was or could be involved in them.

The "Ann Caroline," 2 Wall., 538.

The Act of 1851 neither expressly nor by fair implication affects the liability of the offending *res*. On the contrary, it expressly affirms it and says that no recourse shall be had against the owner in addition. That act is not an act in anywise regulating, limiting or abolishing maritime liens.

The learned Justice who decided this cause below misapprehended the drift and purport of the argument. We contend that inasmuch as the statute limits the liability of the owner to his interest in the vessel, that liability is co-extensive with the vessel, and when proceedings have been taken against her and her alone, and she is in the possession of the Court, those proceedings cannot be enjoined, for they seek simply

to enforce a lien given by law, which the statute has not interfered with.

We know of no reason why all persons claiming liens upon an offending vessel by reason of damage for which the owners are not subject to personal liability under the statute, may not intervene for their interest in a cause *in rem* against the vessel under the 43d Admiralty Rule and claim an apportionment and *pro rata* distribution of her proceeds. A practice outlined by the learned Judge of the District Court in the stipulation given in the cause in which these appellants were libellants, and expressly sanctioned by this Court in

The Lottawanna, 21 Wall., 558.

Such would seem to be an especially "appropriate proceeding" for "apportioning" the value of the vessel "amongst the parties entitled thereto."

This view it seems to us was palpably in the minds of this Court when they provided in rule 54 only for restraining the prosecution of suits against the owners.

Of course, it goes without saying that a suggestion of the proceedings of these appellees under their petition in the Place libel, made by them to any Court in which suit was brought against them *in personam*, should have operated to stop that suit pending the final determination of that cause.

Norwich Co. vs. Wright, 13 Wall., 104–125.

Indeed, it may well be said that the act of these appellees in causing an appraisement to be had of the offending *res*, and giving to the Court in lieu thereof the usual admiralty stipulation for her value expressly by its terms, for the benefit as well of all other claimants for loss and damage by the same cause as of the libellants in the suit in which it was given, was practically, and within the meaning of the statute, a trans-

fer to a trustee within the meaning and intent of section 4 of the Act of 1857.

Consequently all proceedings, in any suit or cause *in personam* against the appellees, thereafter had, would have come within the express inhibition of the statute, which it is not to be presumed any Court of the United States would knowingly violate. At any rate, such violation would have been promptly corrected on appeal.

Prov. Steamship Co. vs. Hill Mfg. Co., 109 U. S., 578.

If the petition under which the proceedings in the case at bar were had was permissible and was rightly entertained by the District Court, then,

II. The order of March 5, 1873, directing an appraisement was unauthorized and irregular, and must, with the proceedings founded thereon, be set aside so far as these appellants are concerned.

The fifty-seventh rule in admiralty, prescribed by this Court, provides in cases of this kind that "If the ship have already been libeled and sold, the proceeds shall represent the same for the purposes of these rules."

In the case at bar, the ship had already been libeled; she had also been sold and her proceeds were in Court. That is to say, the Court, in the regular way, had satisfied itself of the value of the ship, and instead of disposing of her at public auction with the attendant risk that she might not bring her full value, had disposed of her at private sale, and taken from her purchasers adequate security for the payment of her purchase price into Court whenever required. The price so paid or secured was determined by the showing of the peti-

tioners themselves (Record, page 30). They acquiesced in its justice, and bound themselves to pay it. They cannot be heard to complain of it, as the purchase was their own voluntary act.

The stipulation for value given by them represented the ship, was her proceeds, and constituted the fund which in any event the Court was bound to apportion under the second petition.

Norwich Co. vs. Wright, 13 Wall., 104–124.

It was a substitute for the ship delivered to the petitioners, stood in the place of it, and represented it. It could not therefore be put aside and a new valuation substituted in its place.

The North Carolina, 15 Pet., 40–51.

III. The Court below erred in finding as a matter of fact that the fire was inseparable from the collision.

We are not unmindful of the numerous decisions showing the interpretation placed by this Court upon the Act of 1875 touching appeals in admiralty.

Neither do we wish to be considered as seeking to question those decisions. So far as we are advised, the precise question presented now has never been submitted to this Court for decision.

Assigning to the words their ordinary meaning, this is a finding, as matter of fact, that after the occurrence of the collision the fire was necessarily inevitable; in other words, that the collision could not have occurred without being followed by the fire.

We insist that nowhere in the record is or ever was there any evidence tending to support such a finding.

It seems that in such a case a question of law is raised upon the record calling for a review by this Court strictly within the terms of the act.

Whether or no this Court may deem the fact so found material to the determination of the cause, or whether it was so considered by the Court below, we, of course, cannot now tell. If, however, this Court shall so regard it, and if it shall be unable to find in the record any evidence to support the finding, then it seems to us that it must determine that, as matter of law, such finding was error.

IV. The Court below erred in finding, as matter of fact, that the order for the appraisement of the amount of the value of the interest of the petitioners as owners respectively of said steamboat and her freight pending was made *after* the issue of the monition and the appearance of these appellants herein.

Again protesting that we have no wish to try the patience of this Court by mooting settled questions, we say that, so far as we are advised, the question here raised has not been decided. This finding of fact is directly contrary to the undisputed evidence afforded by the very record of this cause itself. By a simple examination of the record now before it this Court will see that the order for appraisement was entered March 5th, 1873 (Record, p. 51), while the monition is dated March 28, 1876 (Record p. 77).

How far the Court may, or the Court below did, deem this fact material, and what inferences were or may be drawn therefrom unfavorable to the appellants, we do not and cannot know. It would seem that a finding of fact in direct opposition to undisputed and indisputable evidence was error as matter of law.

Certainly, if prejudiced thereby, some method and measure of relief ought to be open to these appellants. We know of none except by appeal to this Court, and we present the point as we have the preceding, to the

end that if the fact as found shall prove to be an element in the decision of this Court, the proper method of procedure in such a case may be indicated, if relief may not be given, by this Court on this present appeal to these appellants.

V. The Court below erred in finding as a matter of fact that the value of the interest of the petitioners in the steamboat as she was immediately after the disaster, was $2,500 and no more.

This Court has held in the Sun Company vs. Ocean Co., 107 U. S., 501, that where a conclusion which might have been stated as a conclusion of fact is found among the conclusions of law this Court will consider, not whether it might have been true as an inference from other facts stated in the findings, but whether upon the facts found it *must* be true as matter of law.

It would seem to follow, that where a conclusion, of which the substance is of necessity a mixed question of law and fact, is stated as a conclusion of fact, and it is apparent from the findings and opinion of the Court below that, in so far as it involves matter of law, it is based on an incorrect view of the law, and further that it could *not* be deduced as a conclusion either of fact or law upon the other facts found *and* a right interpretation of the law, then the mere fact that it is inserted in the findings as a finding of fact will not preclude this Court from reviewing it upon appeal.

We state this point now for the consideration of the Court, because we believe that we shall satisfy this Court that the reasons given by the Court below in its findings, for excluding from the valuation announced in this finding other sums of money by it specified, are as matter of law erroneous, and if we shall so succeed we think on principle it is within the jurisdictional power

of this Court to correct the error, and that by the mere locality of this finding they are not precluded from righting a wrong.

VI. The sum received by the petitioners from the insurance companies as idemnity for the damage caused to the "City of Norwich" by fire, with interest from the date of its receipt, should have been included in the appraisement of the amount of value of the interest of the petitioners as owners in that vessel.

The discussion of this question practically covers, with a single exception, all the remaining assignments of error.

We adopt at the outset all that has been urged in this behalf by the able counsel who have argued before this Court in favor of this proposition, the cases of the "Scotland" and the "Daphne," especially in respect to the actual state of the ancient maritime law upon this point, and shall not attempt to again discuss that branch of the question. We, however, desire to present some views of our own, based upon the wording of the statute.

The Act of 1851 provides that the liability of the owner or owners of the vessel for damage caused as in the present case "without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively in such ship or vessel and her freight then pending;" and then provides that where loss has been suffered by several owners of property, exceeding the whole value of the ship or vessel, and her freight for the voyage, they shall receive compensation from the owner or owners in proportion to their respective losses, and that any one interested may take appropriate proceedings for the apportioning of the sum among

the parties entitled thereto. The statute then provides that a transfer by the owner or owners of his or their interest in such ship or vessel and freight for the benefit of the claimants to a trustee to be appointed shall be deemed a sufficient compliance with the act on their part.

The whole difficulty which has arisen in the application of this statute has been caused by doubt as to the precise time at which the value of the interest of the owners in the vessel, in each particular case, ought to be estimated. This difficulty was experienced in the attempt to administer the first English statute passed on the subject, and led to the enactment by Parliament of a law fixing an arbitrary value upon the vessel. The point has been presented to this Court on three occasions. The first time in a case arising out of the very collision now in question, where the Court held that the owners of the offending vessel could, under the statute, discharge themselves from personal liability by surrendering the ship and freight (13 Wallace, 104), which this Court itself, in the case of the "Benefactor" (103 U. S., 239, 246), interpreted as implying that the value of the ship *at the time of the surrender*, with the addition of the pending freight, if made in a reasonable time, would furnish the proper criterion of the amount of the liability. In the Wright case this Court also said (p. 124) that if the vessel were libeled, and either sold, or appraised, and her value deposited in Court, this sum, together with the amount of the freight (when proper to be added), would constitute the *res*, or fund for distribution; and in the case of the "Benefactor," this Court expressly reserved for further consideration the question as to the rule proper to be employed if, after the collision, the offending vessel should meet with other disaster greatly impairing her value. And in the case of the "Scotland" (105 U. S., 24) this Court said, "Our law adopts the maritime rule of graduating the liability by

the value of the ship, after the injury, as she comes back into port, and the freight actually earned, and enables the owners to avoid all responsibility, by giving up the ship and freight, if still in existence, in whatever condition the ship may be; and without such surrender subjects them only to a responsibility equivalent to the value of the ship and freight as rescued from the disaster."

Acquiescing entirely in each of the above expositions of the law as applicable to the cases in which they were made, and the points then in decision, it seems to us that neither is sufficiently comprehensive to meet all the cases which might arise. As in the case of the "North Star" (106 U. S., 17), where the question was raised whether, where two vessels were held jointly in fault for the collision, and the owners of the one which had been totally lost had limited their liability under the statute, they were entitled to recover from the other vessel the one-half of the damages they had suffered free from all claims of the other vessel for damages sustained by her.

In which case the Court held that the limitation of liability did not apply until the resulting liability of one party to the other had been ascertained.

It seems to us that the meaning and intent of the Legislature, in the enactment of this statute, was to constitute the owners of a vessel, on the instant of the happening of any event by reason of which damage might result to others, for which they were or might be liable, and for which they desired to limit their liability under the statute, into trustees, holding the vessel and everything which might be realized from her thereafter during that voyage for the benefit of the sufferers.

It is a fundamental principle in the interpretation of statutes that they must, if possible, be so construed as to operate with uniformity in all cases; and we believe that on no other theory can absolute uniformity be secured in the operation of this statute. Certainly, if

this theory is, as we believe it to be, a correct one, and is adopted, the operation of the statute must, in all cases, be uniform, the result to the owners must, in all cases, be the same, and, in so far as the results to those who suffer loss or damage may be varied in different cases, the variation will not be caused by the law or its interpretation, but by the risks and perils of navigation.

The liability of the vessel owner to the shipper of the cargo, for damage to his cargo during the carriage, results from the contract of carriage, and its breach, and the action for breach of that contract in a case where the damages would be properly limited under the statute, would be what was formerly denominated an action of trespass on the case. The responsibility of the vessel owner for damages caused by collision with another vessel, in a case where his responsibity for those damages would be limited by the statute, would arise from his responsibility for the act of his master or mariners, his servants, and would be an action of trespass on the case. Both these actions sound in tort.

It is settled law that in such an action the right of action accrues at the instant of the commission of the fault, even though the resulting damages may not be suffered for some time afterwards.

Argall vs. Bryant, 1 Sandf., 98.
Wilcox vs. Plummer's Executors, 4 Peters, 172.

Such being the case, it seems to us equitably and fairly within the meaning of the law, that at the instant of the occurrence by which the liability of the shipowner is fixed, the ship itself and the freight that may be earned on that voyage should be deemed appropriated to the satisfaction of the resulting damages, and so it was held under the statute (53 Geo. III., Chap. 159), the wording of which was entirely similar to the Act of 1851.

Dobree vs. Schroder, 6 Simon, 291.

Our statute, it is true, provides that the owner may be deemed to have complied with the act if he shall transfer his interest in the vessel to a trustee, and hence, it has been argued, and held, that our act did not adopt the rule of the English act. This is true, for under our act, to some extent, the perils necessarily attending the completion of the voyage by the offending ship must be borne by the sufferer, but surely it could not have been in the contemplation of the Legislature that an owner whose ship was pledged to her full value to answer for damages suffered, should thereafter benefit by any occurrence to that ship which should at the same time diminish the remedy of the sufferers against her. That is to say, if a vessel to whose cargo loss or damage has occurred, for which her owners are liable, and for which they seek to limit their liability under the act, shall thereafter, during the same voyage, be sunk by a collision with another vessel, resulting from the fault of that vessel alone, it is not to be believed that this Court would hold that the owner seeking to limit his liability might transfer the wreck at the bottom of the sea to a trustee, and at the same time recover to his own use from the offending vessel the full value of his ship before she sunk, freed from any demand of the freighters. In such a case were a transfer of the vessel made by the owner, in the words of the statute, to a trustee, assigning to the trustee all his interest in the said vessel, certainly any court of justice would hold as was held in the case of

Waldron vs. Willard, 17 N. Y., 466,

that a written instrument is always to be interpreted so as to give it some effect, and that therefore, by the term interest, as used in the assignment and in the statute, must be held to be included the right of action of that owner against the offending vessel.

If this proposition is correct it is manifest that the rule enunciated by this Court in the case of the "Scot-

land" (*ubi supra*), that the liability of the owners is measured "by the value of the ship as she comes back into port," though correct in its results as applied to the point then in mind, was not intended as a universal rule applicable to all possible cases; and it would also follow that if in the case last supposed the vessel primarily liable for damage to her cargo instead of being a total loss by reason of a subsequent collision, was damaged thereby only to the extent of a portion of her value, whether greater or less, the right of action against the offending ship for that damage should also pass to the trustee under the assignment, otherwise the law would be uncertain in its application and the owner would benefit by that which reduced the security of the pledgees, and it would also result that the rule suggested in Norwich Co. vs. Wright, 13 Wallace, 104, and interpreted in the Benefactor (103 U. S., 239), "that the value of the ship at the time of the surrender, if surrender is made in a reasonable time, would furnish a proper criterion of the amount of liability," though unquestionably correct in its application to the case as then in the mind of the Court, is not to be interpreted as a universal rule applicable to all cases.

Again, if the proposition above stated is correct it would seem to follow by parity of reasoning that if, by reason of the act or occurrence out of which their liability to the freighters arose, or of any subsequent occurrence to the ship on the same voyage, their vessel suffered damage for which her owners received compensation from any source, as, for instance, underwriters, moneys so received should be held as received to the use of the injured freighters and be held to pass under the assignment.

It has been urged in opposition to this view that the contract of insurance is a personal contract, and by the transfer of the insured property before the loss, right of action is gone, there remains no insurable interest in the holder, and, therefore, if the transfer con-

templated by the act were made before the loss the trustee would have no right of action against the in-insurance company and that this is a conclusive argument against the inclusion of the insurance moneys in the assignment of the interest of the owners in their vessel.

There are two answers to this position: In the first place, if as matter of fact the transfer to a trustee were made before the occurrence of subsequent disaster, there would be opportunity for, and it would be the duty of, the trustee to insure the property forthwith, and by delay on the part of the owners for their own benefit in taking such a course the sufferers should not be prejudiced; and second, that in the case at bar the moneys have been collected from the insurance companies and received by the owners, and we say that, under the statute, the common case is presented of the legal title to property vested in one person, the beneficial interest in another, and in analogous cases it has been uniformly held that if loss or damage occurs to the property, and the holders of the legal title receive compensation therefor, they receive it for the benefit of the holders of the beneficial interest.

Wyman vs. Wyman, 26 N. Y., 253.
Burbank vs. Rockingham Ins. Co., 4 Foster, 550.
Beach vs. Bowery Ins. Co., 8 Abb. Pr., 261.
Parry vs. Ashley, 3 Simon Ch., 97.
Ins. Co. vs. Updegraff, 21 Penn. St., 513.
Gates vs. Smith, 4 Edw. Ch., 702.
Eagle's Case, 3 Abb. Pr., 218–235.

In the latter case the Court using this language:

"Policies of insurance through personal contracts are so far collateral to the subject matter to which they relate that where there is a change of title to the subject matter by death, the legal representatives of the deceased take such moneys as may issue by virtue of

the contract in trust for the legatees interested in the property insured."

We say that cases of this kind, where the benefit of the statute is sought, should be treated in all respects as if the ship owner had died at the instant of the commission of the wrong and his ship had become the property of the sufferers of damage as his next of kin.

In the case of the "Rebecca," Ware, 188, 206, the learned Judge in discussing the responsibility of the owners of the vessel for acts of the master, and distinguishing between their liability for his acts *ex contractu* and *ex delicto*, after stating that as the master of the vessel is the simple agent of the owners, upon the plainest deductions of reason, his contracts within the legitimate scope of his authority ought to be personally binding on the owners, says that it is, however, by no means so clear that upon the principles of natural law the owners are responsible for the tortious acts of the master, because the tortious acts of the agent do not fall within the limit of his authority.

Such acts not being authorized by the principals, the agent with respect to them is not their agent, and they are not naturally responsible for them. "*If the principal has derived any benefit from such acts of the agent to the extent of that benefit he is responsible upon the principles of natural justice, and no man ought to be enriched by the loss and injury of another.*"

The correctness of this principle and its solid foundation in morals cannot be questioned. We think it has a direct application to the case at bar, and, properly applied, demonstrates that the moneys received by the appellees from the insurance company should be surrendered by them to the appellants. The liability of the appellees to the appellants for the damage suffered by the latter arises from the wrongful act of the master of the steamboat "City of Norwich" in so navigating his vessel as to cause the collision. Under the

Act of 1851 these appellants were entitled to indemnification for this damage out of the offending vessel the "City of Norwich." The fire reduced the value of the vessel, and this reduction has been made good to the appellees by the insurance. But the fire, as the Court below held, was a consequence of the collision. It was, therefore, a result of the wrongful act of the master, and, unless the appellees shall turn over these moneys to the appellants, they have so profited to their injury; that is to say, to the extent of the moneys received from the insurance companies, they have derived a benefit from the wrongful act of their own agent, and, unless the moneys so recived from the insurance companies shall be applied to the satisfation of the appellants' claims, they will to that extent have been enriched by the loss and injury of the appellants.

If it be replied that the moneys received from the insurance companies were received by reason of the contract of insurance and the premiums paid by the appellees, we say that is true, but that, notwithstanding the contract of insurance and the moneys paid as premium, but for the wrongful act of the master in causing the collision and consequent fire, they would not have received these moneys and that the proximate cause of their receipt was the fire and the act of the master and not the contract of insurance and premium.

The same argument might have been used, *mutatis mutandis*, *In re* Leonard, 14 Fed. Rep., 53, where the avowed purpose of the petitioners was, there having been a collision in which their vessel had been sunk, and by reason of mutual fault in both vessels, each had been condemned in half the damages, to be exempted from liability to pay for their half of the cargo lost, which by the interlocutory decree they had been adjudged to pay, while retaining to their own use the one-half part of the value of their own vessel which they expected to recover from the other ship.

It could have been urged with equal force in that

case, that they were entitled to recover that moiety of the value of their vessel from the other ship by reason of the wrong committed against them by the faulty navigation of that ship, and by reason of the damage they had suffered in consequence. Yet the Court in that case held that the moneys to be paid by the other ship for the loss of the petitioner's vessel equitably represented so much of that vessel, and, when paid into Court, would constitute a *res* sufficient to give the Court jurisdiction of the proceedings in limitation of liability. This decision so manifestly correct foreshadows the decree afterwards entered in the principal cause awarding the proper portion of the moneys recovered to the owners of the cargo on the lost vessel.

On what possible hypothesis can the moneys paid for the loss of the vessel in the case last cited be held equitably to represent so much of that vessel, unless the money received from an underwriter for the same loss also equitably represented her? Had the lost vessel in that case been insured and paid for as a total loss the damages awarded for her would have belonged to the underwriters.

The same question was raised in

The C. H. Foster, 1 Fed. Rep. 733,

and similarly decided, the Court holding that the moiety of damages must be appropriated to the satisfaction of the damages suffered by the freighters, saying that "as between the parties the damages represent the vessel," and so working out the manifest equity of the case in favor of the freighters through the rights of the other vessel.

We say and insist that within the manifest purview and intent of the Act of 1851 both damages and insurance not only equitably but actually represent the vessel; and we most earnestly urge upon this Court that it should not, unless compelled by some binding authority, adopt such a construction of the Act of

1851 as will impose upon Courts in future the necessity of working out manifest equities by circuitous methods and fine drawn subtleties, when, by the simple construction which we claim for that act, absolute equity will be attained without difficulty in all cases.

The purpose and object of the Act of 1851, embodying, as this Court has held that it does, the rule of the ancient maritime law as to the liability of ship owners, must be held to be the same as the purpose of that rule, namely, to encourage commercial enterprise by securing to the land fortune of the ship owner immunity from liability for the misfortunes of his sea fortune; in other words, to enable the merchant to invest such part of his capital in a ship as he may see fit, with the certainty that the remainder of his fortune cannot be involved by any wrongful act of those in charge of that ship, committed without his knowledge, privity or consent.

Public policy, and the safety of water borne cargo, require the ship owner to use proper effort to secure trustworthy and competent persons to manage his vessel. The law-making power recognizing the fact that honesty and competence are not universal qualities, and that the most diligent are sometimes deceived, considering the value of the ship sufficient to induce the owner to reasonable care in the selection of his master and crew, and deeming it unjust and unwise to involve the remainder of the ship owner's property in the consequences of an honest mistake, has provided that for the consequences of such mistake he shall only be liable to the extent of the value, not of the vessel as she may exist after disaster, but of his interest in her, and as one method for his exoneration has provided that he may transfer that interest to a trustee.

It seems to us that the use of this word *interest* is significant. A painstaking and experienced digester and reporter has defined the word to mean:

"A claim to advantage or benefit from a thing; any right in the nature of property, but less than title; a partial or undivided right; a title to a share.

"In this sense the word is used in a great variety of ways and with many different shades of meaning. Its chief use is to designate some right attaching to property which either cannot or need not be defined with precision; hence it occurs in many connections where its meaning is vague, not from any peculiarity in the word, but because there was no certain, definite meaning to be expressed. In some connections it seems to be used as including title, but as broader, and chosen because more comprehensive, as in the rules that actions shall be brought in the name of the real party in interest; that contracts for the sale of any interest in real property must be in writing. Sometimes it seems to mean advantages less than title, as in the expression, that a lessee before entry has no estate the land, but only an interest in the term. Sometimes it is added to words of more definite meaning, apparently only by way of precaution that no *conceivable claim* shall be omitted, as in conveying all one's right, title and interest. Sometimes it signifies an undefined share, as in saying that one has an interest in a business; that a master was promised an interest in the freight."

Abbott's Law Dictionary, Tit. Interest.

To this definition we cordially assent. And it seems to us evident that if this Court shall interpret the word differently and so exclude insurance from the operation of the transfer under the Act of 1851, it will in large measure nullify the intention in the passage of that act, since by so holding they will permit the owner to retain his sea fortune intact, while refusing redress to the sufferers by the misconduct of his own agent.

A case perfectly supposable may be used to illustrate:

Some embezzlement, loss or destruction occurs for which the ship is liable. The ship is insured for her full value in a valued policy, she suffers damage and becomes a technical total loss. The owner abandons to the underwriter and receives her price. The vessel comes finally to port. The owners petition and limit their liability, paying nothing because as to them the ship is lost and they have nothing to transfer to a trustee. Libels are filed by the freighters against the ship. They must be perpetually enjoined under the decision of the Court below in this case, or, on the same authority the libels must be dismissed because the freighters having no action against the owners or underwriters in person, can have none against the vessel *in rem.*

It is submitted that such a result would be gross injustice if permitted, and that it must ensue under the principles governing the decision of the Court below, unless the Court, when the case arises, should be astute enough to work out the equities by some line of argument and distinction so subtle as to have escaped us. That such a result would be possible as a logical deduction from the decision below, we deem a most conclusive demonstration that it is incorrect.

In the opinion filed in the cause below the learned Judge says, quoting the language of Lord Chancellor King in Lynch vs. Dalzell, 4 Bro. P. C., " that insurances against fire do not attach to the realty, or in any manner go with the same as incident thereto by any conveyance or assignment, but they are only special agreements with the persons insuring against such loss or damage as they shall sustain."

We reply, that if, as the statute provides, the whole interest of the owners in the offending vessel was appropriated, on the instant of the fault, to the satisfaction of the claims of the sufferers, we are unable to see how the owners of the vessel could thereafter suffer any damage by reason of anything which might happen to

that vessel; and if, by reason of any injury that thereafter happens to that vessel, they recover a sum of money from the insurers as indemnity, the indemnity insures in equity to the benefit of those who really suffer the loss for which the money so paid was an indemnity.

In the Court below it was urged by these appellants, as it is urged here, that the use of the word "interest" in the Act of 1851 in the phrase, "shall in no case exceed the amount or value of the interest of such owner or owners, respectively, in such vessel," implied an intention on the part of the Legislature to include in the estimation of that value everything in the way of benefit or advantage, which, for any cause, the owner might be entitled to receive by reason of his ownership of the vessel, and the learned Judge, quoting the language of the statute, because of the use of the words "owner or owners," interpreted the use of the word "interest" to mean the part interest or share owned by each of the several owners.

We submit that the change of the phraseology in the Revised Statutes: to wit, Sec. 4283, "the liability of the owner of the vessel * * * shall in no case exceed the amount or value of the interest of such owner in such vessel," indicates conclusively the intention of the Legislature to be that for which we have contended, and excludes the interpretation placed upon the Act of 1851 by the Court below.

If it is objected that this theory of a trust finds no support in the wording of the Act of 1851; we say that it necessarily results therefrom, though not declared *in ipsissimis verbis.*

By the Maritime law the sufferers by the fault of a ship acquire, on the commission of the fault, a lien upon the offending *res* for their damages that is a right in the thing.

In the case of cargo the familiar expression is that immediately upon shipment the ship is bound to the

cargo, and the cargo to the ship, for the faithful performance of the contract of carriage.

The Act of 1851 simply provides that when such a lien has attached the shipowner may, if he chooses, limit the remedy of the lienor to the offending ship, and confine his recovery to that which he may be able to get out of the ship.

It is reasonable that time should be given the shipowner in which to make his election, whether to stand his liability for the whole loss or to refer the claimants to the offending *res* alone; nevertheless, the plainest principles of equity require that the time so granted should not be permitted to change the relative situations of the parties to the *advantage* of either.

This Court has held in the "Scotland," *supra*, that the results of the alternative methods of procedure provided by the statute are the same so far as the shipowner is concerned.

Certainly they would not be if the law were satisfied by a transfer of the ship after her value had been diminished by a second and subsequent disaster, and the owner permitted to receive to his own use the damages recoverable therefor; and if such a transfer would not be sufficient it would plainly be because equity required it to be made as of the time the original fault was committed. If this be true it is equally clear that after the original fault and prior to the transfer the shipowner held the vessel as a trustee for those in whom the beneficial interest was thereafter to become vested by his own choice; whose *jus in re* was thereafter by his own act to be turned into a *jus ad rem*.

The learned counsel for the appellees has, by permission of this Court, filed a brief upon the question of insurance in the case of Dyer vs. The National Steam Navigation Co., to some points in which we desire to present our answers.

Counsel says, at page 3, quoting from the decision in Watson vs. Marks: "The policy of in-

surance is a distinct and independent subject of property. No equity attaches upon the proceeds of it in favor of third persons, unless there is some contract or agreement or trust to that effect (Ellis on Ins., 81). The assignment of a ship passes no interest in an outstanding policy." To which we reply that the Act of 1851, upon the happening of an event by reason of which the liability of the owners of a vessel attaches, impresses a trust upon the offending vessel in favor of the sufferers, and it is a familiar principle of equity that a trustee may not receive benefit, himself by reason of any contract affecting the trust property.

Counsel also says, quoting 3 Vesey, 472: "A fire insurance policy on a house is a merely personal contract, and passes even in equity to the executor and not to the heir." To which we reply that this is true in its literal terms, but as shown by the citation, (*supra*), the executor takes the moneys recovered under the policy in trust for the legatees of the property, and not for distribution as personalty under the will.

The learned counsel, on page 7 of that brief, considering the provisions of section 4 of the original Act of 1851, concedes the proposition that "the limit of the liability of an owner is the whole value of the vessel, and her freight for the voyage," and adds a citation: "The most natural and genuine way of construing a statute is to construe one part by another part of the same statute, for this best expresseth the meaning of the makers, and such construction is *ex visceribus actis;*" and shortly after quotes from Kent's Commentaries: "The words of a statute, if of common use, are to be taken in their natural, plain, obvious and original signification and import."

And then he proceeds to say that a contract of insurance by which the owner is entitled to indemnity for any injury to his interest by the peril insured

against would never be thought of as an addition to the value of his interest.

We are quite content to accept the concession that the limit of the owner's responsibility is "the whole value of the vessel and her freight for the voyage," and while we do not claim, and never have claimed, that a transfer of his interest in the vessel would have been operative to transfer any then existing policy of insurance upon it, our claim is, and so far we do not perceive that it is answered by the contention on the other side that where for any reason the whole value of the vessel is diminished and for any cause the owner is entitled to and does recover from any one the amount by which the value of the vessel has been so diminished, the moneys so recovered in equity represent the portion of the vessel destroyed, and belong to those to whom the vessel if uninjured would have belonged; otherwise the "whole value of the vessel" would not be the measure of the owner's liability or the sufferer's redress, but only that value, less such part thereof as, by reason of injury, the owner has been compensated for.

In the same brief counsel for the appellees cites

Carpenter vs. The Providence Ins. Co., 16 Pet., 495,

in support of the proposition that a mortgagee has no claim to the proceeds of a policy of insurance taken out by the mortgagor, and assumes an analogy between that case and the case at bar sufficient to make that case controlling here.

We think that case a strong one in support of the position contended for by these appellants.

In an able exposition of the law by the eminent Judge who wrote the opinion of this Court in that case, after the statement that both mortgagor and mortgagee may each separately insure his own distinct interest in the mortgaged property, but that an insurance by the mortgagee was an insurance simply of his debt, which,

in case the premises were destroyed by fire, the insurers would be bound to pay to the extent of the sum insured, but would thereupon be entitled to an assignment of the debt, and to recover it from the mortgagor, the payment of the insurance merely changing the creditor and not extinguishing the debt, occurs this sentence :

" Far different is the case where an insurance is " made by the mortgagor on the premises on his own " account ; for notwithstanding any mortgage or other " incumbrance upon the premises, he will be entitled " to recover the full amount of his loss, not exceeding " the insurance " (p. 501). Unquestionably true—but what is the reason of this rule of the law as given by the learned Judge and sanctioned by this Court? Is it because the insurance was the price of the premium paid by the mortgagor? By no means. Is it because the contract of insurance is a mere personal contract between assured and insurer, in which the mortgagee has no interest? Not at all.

The reason, and the only reason, given by this Court, and the only reason which we submit can be given rationally by any one is :

" Since the *whole loss* is *his own*, and he *remains personally liable* to the mortgagee or other incumbrancer " for the full amount of the debt or incumbrance.

Just as where the mortgagee insures his debt, if that be paid and the premises be destroyed he suffers no damage, and therefore can recover nothing.

Cessante ratione legis, cessat ipsa lex. We say, that in a case like the one at bar, where damage done to an offending *res*, (in which, by reason of the offense, the whole right of the owner has become appropriated by statute to the satisfaction of the sufferers by that offense, and the owners absolved from liability for their claims), is paid for by an insurer, the reason of the rule will necessitate the surrender of the insurance moneys

to those sufferers, and will not permit the owner to retain them to his own use, because the loss is *not* his own, and he does *not* remain personally liable for the debt.

We do not claim that if before the happening of the loss the vessel had been transferred to a trustee under the statute any then existing policy of insurance would by force of that transfer have passed so as to give the trustee a right of action in his own name against the underwriter in respect of a subsequent loss; but we do claim that if in such a case the assured should recover, his recovery would in equity be to the use of the beneficiaries under the trust; and that by the force of a transfer made *after* the loss the right of action on the policy would pass to the trustee.

Lord Abinger, in Powles vs. Inness, 11 M. & W., 13, is quoted by the learned counsel as saying of the contract of insurance:

"It is a contract of indenmity only, and nobody can "recover in respect of the loss who is not really inter- "ested."

True, and we are unable to see how an owner, whose whole interest in the vessel has been by law appropriated to the satisfaction of claims for damage, from which, by the very fact of appropriation, that owner is discharged from liability, can have any interest in the vessel thereafter, or be harmed by anything that may subsequently befall her; or how he can be entitled to indemnity for any damage she may suffer.

Surely, if by reason of his delay in executing the formal instrument, required by the law of which he seeks the benefit, he is enabled, by retaining the technical legal title to the ship, to recover in respect of such a loss, equity requires that recovery to be to the use of those entitled to the beneficial interest in the vessel.

VII. As to the taxation of costs.

Ordinarily, a question of this kind would hardly be presented to this Court. As a mere matter of dollars and cents we should certainly not feel justified in asking this Court's attention to the error, though even in that view it is not inconsiderable.

The principle asserted in the taxation, however, seems to us so monstrous a violation of equity and ordinary practice, and so contrary to law, as to deserve rebuke from this Court.

The bill of costs as taxed is found at page 17 of the record. An inspection will show that there was taxed in favor of the petitioners' proctor a docket fee of twenty dollars, and a fee on reference of twenty dollars, for each claim proved before the Commissioner, amounting to six hundred and forty dollars; an amount nearly two and one-half times greater than the sum finally divided among the sufferers.

This allowance was entirely unauthorized.

(*a*) There is no provision in the Act of 1851 allowing costs to any party.

(*b*) The Act of 1853 regulating fees allows but a single docket fee of twenty dollars on a final hearing in equity or admiralty, so that at least $620 was wrongly allowed.

(*c*) But costs are only awarded to the prevailing party,

State vs. Bridge Co., 18 How., 460.

and the petitioners were not the prevailing party on the reference as to damages.

(*d*) The provision for the "payment of costs and expenses" in rule 55, it is submitted, refers only to such costs and expenses as would be directed paid out of remnants and surplus remaining in the registry of the Court. It was surely never heard that a docket fee was taxed in favor of the proctor for

the owner of a condemned vessel, for each claim proved and allowed against her remnants in spite of his opposition.

We cannot believe that in addition to losing all personal claims against the owner of an offending vessel either the Legislature by the Act of 1851, or this Court by its rule, intended to compel each claimant to pay the proctor for the petitioner forty dollars for the poor privilege of presenting an indisputable claim to a share in the pitiful remnants of a wrecked vessel.

VIII. The decree of the Circuit Court should therefore be reversed as to these appellees, with costs, the petition herein dismissed as to them, and the injunction restraining them from proceeding to decree and recovery under the stipulation for value, under their libels against the "City of Norwich," vacated and set aside; or else this cause should be remanded to the Circuit Court, with instructions to include in the appraisement of the amount of the value of the interest of these appellees, as owners of the "City of Norwich," the moneys received by them from the insurance companies, with interest from the date of their receipt, and to apportion the same, or so much thereof as may be necessary to the satisfaction of their claims, among these appellants.

J. LANGDON WARD,
Proctor and Advocate for Geo. and Chas. Place, and Chas. D. Bigelow, survivor, &c., Appellants.

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Supreme Court of the United States,

OCTOBER TERM, 1885: No. 62.

GEORGE PLACE, ET AL., AND WILLIAM A. WRIGHT, ET AL., *Appellants,*

vs.

THE NORWICH & NEW YORK TRANSPORTATION COMPANY.

BRIEF FOR THE APPELLANTS WILLIAM A. WRIGHT, ET AL.

HUNTLEY AND BOWER,
Proctors.

C. R. INGERSOLL,
Advocate.

Hoggson & Robinson, Law Printers, New Haven.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1885. NO. 62.

GEORGE PLACE, *et al.*, *Appellants*,

vs.

THE NORWICH & NEW YORK TRANSPORTATION COMPANY.

Brief for Appellants William A. Wright and others, claimants of Schooner Gen. Van Vliet and cargo.

STATEMENT.

This appeal is in Admiralty.

The appellants, *William A. Wright and others*, were the owners of the schooner *General Van Vliet* (and her cargo) which was run down in Long Island Sound, on the 18th of April, 1866, by the steamer *City of Norwich*, of which the appellee, the Norwich & New York Transportation Company, then was and has since continued to be, the sole owner. The fault of the collision was wholly with

the steamer. *Norwich Company* vs. *Wright*, 13 Wall., 104.

The appeal is taken from a decree of the Circuit Court of the United States for the Eastern District of New York, passed June 29, 1882, affirming a decree of the District Court for that District, passed January 4, 1879, whereby the said steamer City of Norwich and her owner, the said Norwich & New York Transportation Company, were forever discharged from all liability growing out of said collision, upon the payment into Court, for apportionment among the sufferers by said collision, of the sum of twenty-five hundred dollars; said sum being found by said Court to be the value of the owners' interest in the steamer, and pending freight, to which the liability of the vessel and its owner was limited. The decree of the Circuit Court will be found at p. 99 of the *Record;* the decree of the District Court at p. 85.

These decrees were passed upon the petition of the said Norwich & New York Transportation Company, brought to the District Court of the United States for the Eastern District of New York, June 13, 1872, (*Record*, p 34, 50), setting forth the petitioner's ownership of the steamer; the facts of the collision; the sinking of the steamer in consequence of the collision; her raising by salvors; the re-possession of her by the owner; her repair by the owner; the arrest of the vessel upon admiralty process issued out of the U. S. District Court for the Eastern District of New York, at the suit of sundry libellants, freighters of her cargo, for their loss by the collision; the bonding and re-

lease of the vessel by said Court upon stipulation for her then value in the sum of seventy thousand dollars; the decrees of said Court in favor of said libellants; that the total amount of claims instituted against the petitioners, occasioned by said collision, greatly exceed the value of the vessel and freight; and, therefore, praying for an appraisement of the value of the petitioners' interest, as owners of the said steamer, in the vessel and her freight for the voyage, pursuant to the "Act to limit the liability of ship-owners, and for other purposes," passed March 3, 1851, and for the payment of such valuation into Court, or the giving of stipulation therefor, and "upon the payment of such valuation into Court, or upon the filing of such stipulation, that the stipulation heretofore given, be cancelled and your petitioners and their sureties thereon be discharged from all liability thereunder." Prayer was added for a monition for proof of claims and for an "order restraining the further prosecution of all and any suits against the said steamboat or against your petitioners, as owners of said steamboat, in respect to any such claim or claims for damages, occasioned by the collision, &c."

Upon this petition, order of notice by publication was passed (p. 51) Oct. 17, 1872.

An order for appraisement of the vessel was made March 5, 1873 (p. 54) with reference to a commissioner, notice being served upon these appellants.

The appellants appeared before the commissioner excepting to the jurisdiction (p. 57).

The report of the commissioner was confirmed March 29, 1876 (p. 76).

Reference to a commissioner for proof of claims was made April 13, 1877 (p. 79), and the commissioner's report made Feb. 13, 1878 (p. 84).

Thereupon the decree of the District Court before mentioned was passed, and the appeal taken by these appellants to the Circuit Court.

Upon the hearing of this petition, on appeal, in the Circuit Court, a finding of facts was made (*Record*, pp. 3–14), and conclusions of law therefrom stated (p. 5) as the basis of the decree of affirmance.

To certain facts of the record, which bear particularly upon the questions proposed to be discussed in this brief, we desire to call special attention.

(1.) The steamer, although sunk by the collision or its consequences, was at no time "lost" to its owner. Under what circumstances the salvage service was rendered does not very clearly appear; but it is clear that there was at no time any abandonment of the vessel by the owner to any one, nor any impairment whatever of the owner's absolute rights of property and possession in her. When raised she was the appellee's vessel as fully as she had been before the disaster or as she would have been after it had she simply grounded and been got off, instead of sinking beneath the waters.

(2.) As such owner the appellee not only held her in

possession, but voluntarily repaired her at Greenpoint in the Eastern District of New York. And while thus at Greenpoint, before Sept. 12, 1866 (*Record*, p. 14), she was seized by admiralty process and brought into the Admiralty Court for that district to answer a libel filed by the appellants Place & Co. for losses sustained by her fault in the collision aforesaid; other like suits were instituted against the vessel in the same Admiralty Court, and, a trial being had of all, as one suit, decrees in favor of the libellants were passed, and the "said steamboat City of Norwich" was on the 23d of December, 1869, "condemned therefor" (*Record*, pp. 33–37).

(3.) While the vessel was thus under arrest and in the custody of the District Court, the appellee, claiming the vessel as its sole owner, on the 19th October, 1866 (*Record*, p. 92), filed its petition to that Court for the benefit of the limited liability Act of March 3, 1851, setting forth that the vessel then under arrest was the same vessel that was engaged in the collision, and praying for an appraisement of her value, and for authority to give a stipulation for such appraised value for the benefit of all claimants who might be legally entitled to compensation for losses occasioned by the collision and also praying that upon the giving of such stipulation "the said steamboat, her engines, tackle, apparel and furniture, as well as the owners thereof" might be discharged from all liability for such losses. (*Record*, p. 27.)

Upon this petition an order (*Record*, p. 29) for the ascertainment of the value of the vessel was made, with authority to the owner and claimant of the vessel to give a stipulation, according to the practice of the Court in bonding vessels, for the amount of such value "for the benefit of the libellants herein (in case they shall establish the liability of said steamboat) and of all persons and parties who may, by due proceedings in this Court, show themselves entitled to liens upon said vessel, by reason of such collision and fire, * * and that upon the entering into and filing of such stipulation the said steamboat, &c., be discharged from all liability for losses and damages, &c."

It was also ordered "that the said libellants and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or damages by reason of such collision and fire, be and they are hereby declared to be bound by this order."

But the Court denied the prayer to discharge the owners of the vessel from any personal liability beyond the value of the vessel. *The City of Norwich*, 1 Ben., 89.

Pursuant to this order the value of the vessel was taken (apparently by agreement) at the sum of $70,000, a stipulation for that sum filed and the vessel released from custody.

The stipulation was taken March 28, 1867, and will be found at p. 30, *Record*, and is the stipulation which the decree now appealed from restrains the appellants from enforcing.

(4) At the time of the collision the steamer was insured against fire damage by policies of insurance upon which the appellee, as owner, has recovered $49.283.07, (*Record* p. 5.)

This recovery was had in the suit referred to in the finding. *The Norwich and N. Y. Trans. Co.* vs. *The Western Mass. Ins. Co.*, 6 Blatch., 241: In Error: 12 Wall, 194.

The decision of the Circuit Court denying a new trial in this case was filed November 24, 1868, the judgment of this Court in affirmance Dec. 3, 1870.

The recovery of this sum was had, as the case shows, upon uncontradicted proof by the owner of the steamer that the vessel was only damaged $15,000 by the collision; the rest of the claimed damage ($84,000) being caused by the fire; and that the "sinking was impossible as a result of the collision merely."

The rule of damages in the case sustained by the Court was "the cash value of the boat just before the fire." And that value the owner conceded, was her cash value before the collision with a deduction of $15,000 for the damage by the collision.

The errors of the Circuit Court complained of and now insisted on will appear in the following Points.

FIRST POINT.

The Court below erred in not apportioning among the sufferers by the steamer's fault the whole value of the owner's interest in the offending vessel at the time the limitation of liability was sought; such value being fixed by the stipulation at seventy thousand dollars.

That the stipulation taken upon the release of the vessel from custody is (independently of any peculiar provision) a substitute for the released vessel, and that the rights and remedies of all parties interested in the released vessel remain unaffected by the substitution, and are to be regarded precisely the same as though the vessel itself was now in Court, as the actual *res* to be subjected to its decrees, we suppose, will be conceded.

U. S. vs. *Ames*, 99 U. S., 42.
The Wanata, 95 U. S., 611.

Regarding, therefore, the vessel as now in the custody of this Admiralty Court, and here lying under a decree of condemnation for its wrong doing, this question is presented:

Does the statute in such case limit the liability of the ship—or give to the owner the right, by any act of his, to limit the liability of the ship—to her value "immediately after the collision" or at any other time after the

collision than when either the creditor seeks to enforce or the owner seeks to discharge that liability? And so that, upon the condemnation of such ship, the owner may relieve her of the condemnation and wholly discharge her of all liens adhering to her, by the payment into Court of a sum of money, equivalent to her value as she was left by the collision, or as that value may be at any other time than when such payment of value into Court is made?

Our contention will be that the statute has no such effect or purpose as that just indicated—that, on the contrary, its sole purpose is to *limit* the liability of the ship-owner to his interest in the ship but within that limit to leave his liability and, necessarily, the remedy of the creditor, as it was under the maritime law before the enactment of the statute. So that the ship-owner's interest in his ship, so long as the ship exists and he remains its owner, shall always be available to the ship's creditor to the full extent allowed by the maritime law, until the ship shall either be discharged of the creditor's liens by judicial sale, without any consent or action of the owner, or by judicial sale with his consent, upon the transfer by him of the ship to a trustee for that purpose, or an equivalent payment of the same value into Court for the benefit of the creditor.

In pursuing this contention we propose to show:

1. That when this statute was enacted, the general maritime law as administered, not only in the United States

where no limitation of the ship-owner's liability by Federal law obtained, but in continental Europe and England, also, where the limitation existed, entitled the lien-creditor to the full amount of the owner's interest in the vessel as that interest might be at the time of its appropriation for his benefit.

2. That the statute did not change the maritime law of the United States in this respect.

I. The notable case of *The Rebecca*, Ware 188, shows how fundamental in the general maritime law is the rule by which the ship is bound for the wrongful acts of those charged with its navigation.

In *The Maggie Hammond*, 9 Wall, 449, this lien is declared to be "an element of the original contract" of affreightment. And in cases of collision it is "impressed upon the wrong-doing vessel." *The China*, 7 Wall, 68. *The Siren*, *id.*, 155.

And this maritime lien or hypothecation of the vessel, adheres to the ship from the instant it attaches—as a proprietary interest—a *jus in re*—and travels with her wherever she may go and in whatever condition she may be, so long as her identity as a ship is preserved.

"It admits, however, of no doubt that if the old keel remains and the identity of the ship can be proved, bottomry claims and other liens upon such vessel may be made good, regardless of the change she has undergone. * * *

So the Roman law determines that where a ship is bequeathed and is afterwards completely repaired, if the keel yet remains the legatee may claim the ship."

Jacobsen's Sea Laws, Book 1, Ch. 1, p. 15.
Reddie Law Mar. Com., p. 89.

"The maritime lien for damage by collision, attaches to the ship and all her appurtenances, to the freight which has actually accrued due, and subsequent accretions in the value of the ship, arising from repairs done after the period when the damage was occasioned, when such repairs were done by the owner, at his own expense."

2 *Kays Law Shipmaster and Seamen* (Lond., 1875) 975.
Williams and Bruce Adm. Jur. 65.

And see:

The Aline, 1 W. Rob. 111.
The Europa, 2 Moore, P. C. C. (N. S.), 1.
The Charles Amelia, 2 L. R. Adm. 330.
The Bold Bucclergh, 7 Moore P. C. C., 267.

The source and origin of this lien is to be found in that ancient rule of the maritime law which gave a sort of personality to the ship, and imposed a responsibility for the faults of its navigation upon her as the offender or guilty *thing*, irrespective of the personality of her owner.

The dictum of Dr. Lushington in *The Druid*, 1 W. Rob., 398, that "the liability of the ship, and the responsibility

of the owners, are convertible terms," has not passed unquestioned in England, *Marsden on Collision* (2d ed., 1885) 86 *n*, and if it has the meaning apparently given to it by the learned Judge, in *Petition, etc.*, 17 Blatch., 237, that the ship is only liable through the owner, and the owner never through the ship, does not correctly express, we venture to say, the principle by which the maritime law determines the liability of the ship. And that Dr. Lushington did not so intend, is, we think, clear by his opinion in the case of *The Aline*, supra.

But however this may be in England, where the administration of the general maritime law has been largely influenced by common law rules and practice, it is very certain that in this country, and particularly, in this court, the doctrine of the general maritime law, as declared in *The Rebecca* (p. 203,) has been uniformly followed, and the master of the ship regarded "not precisely as the agent, or, in the language of the civil law the *præpositus* of the owners but as standing with regard to them in a peculiar relation which was expressed by the term *commendatory*."

And therefore, as Emerigon says (as quoted by Judge Ware, p. 204): "The obligations of the proprietors are rather *real* than personal. * * The master's legal power does not extend beyond the ship of which he is the master, *that is the administrator*."

And later commentators upon the general maritime law are in accord with this. *Bedarride* in his *Commentaire du Code de Commerce* (Paris, 1859) Vol. 1, Art. 216. says:

"The responsibility of the owner rests upon the basis that those who have directly or indirectly dealt with the captain, acting in that character, and within the limits of his power, have really dealt with the ship itself, which becomes the principal bound."

And in *The Malek Adhel*, 2 How., 234, Mr. Justice Story, in giving the opinion of this Court, says:

"It is not an uncommon course in the admiralty, acting under the law of nations, to treat the vessel in which, or by which, or by the master or crew thereof a wrong or offence has been done, as the offender, without any regard whatsoever to the personal misconduct or responsibility of the owner thereof. And this is done from the necessity of the case, as the only adequate means of suppressing the offence or wrong, or insuring an indemnity to the injured party. * * * The ship is also by the general maritime law held responsible for the torts and misconduct of the master and crew thereof, whether arising from negligence or a wilful disregard of duty; as, for example, in cases of collision and other wrongs done upon the high seas, or elsewhere within the admiralty and maritime jurisdiction, upon the general policy of that law, *which looks to the instrument itself, used as the means of mischief*, as the best and surest pledge for the compensation and indemnity to the injured party."

In *The China*, 7 Wall, 68, this Court say:

"The maritime law as to the position and powers of the master, and the responsibility of the vessel, is not derived from the civil law of master and servant, nor from the common law. It had its source in the commercial usages and jurispudence of the middle ages. Originally the primary liability was upon the vessel and that of the owner was not personal, but merely incidental to his ownership, from

which he was discharged either by the loss of his vessel or by abandoning it to the creditors. But while the law limited the creditor to this part of the owner's property, it gave him a lien or privilege against it in preference to other creditors."

In *Freeman* vs. *Buckingham*, 18 How., 189, it was said, with express reference to the case of The Druid:

"We are of opinion that, under our admiralty law, contracts of affreightment, entered into with the master, in good faith, and within the scope of his apparent authority as master, bind the vessel to the merchandize for the performance of such contracts, wholly irrespective of the ownership of the vessel, and whether the master be the agent of the general or special owner."

And, out of this responsibility which the maritime law imposes upon the offending vessel, has grown the peculiar remedy of the Court of admiralty, *in rem*. Its sole purpose is to enforce the lien by which the ship is bound.

"For the redress of these torts, the Courts of admiralty may proceed *in personam*, and when the cause of the injury is the subject of a maritime lien may also proceed *in rem*. The latter proceeding is the remedy afforded for the enforcement of liens of that character. A maritime lien * * confers upon its holder such a right in the thing that he may subject it to condemnation and sale to satisfy his claim or damages; and when the lien arises from torts committed at sea, it travels with the thing, wherever that goes, and into whosoever hands it may pass. The only object of the proceeding *in rem* is to make this right, where it exists, available—to carry it into effect. It subserves no other purpose. The lien and the proceedings *in rem* are,

therefore, correlative—where one exists the other can be taken and not otherwise."

The Rock Island Bridge, 6 Wall, 215.

Now it was also out of this ancient distinction between the liability of the vessel and the liability of the person, that grew the mode by which the principle (grafted upon the Roman law by the maritime law) of limiting the personal liability of the ship-owner to his sea-fortune, was carried into effect.

The ship-owner was allowed to discharge himself from his personal liability by abandoning to his creditor the ship and freight.

That is to say, he was allowed to limit his own liability by limiting the creditor to the remedy which the maritime law gave him against the ship.

But he could not by any act limit the liability of the ship, nor impair, in any degree, the remedy which the maritime law gave the creditor, *in rem*.

In *Norwich Company* vs. *Wright*, it is justly said that, "the learned opinion of Judge Ware in the case of the Rebecca, leaves little to be desired on the subject" of the history of the maritime law in this respect.

From this opinion of Judge Ware and the opinion of this Court in *Norwich Company* vs. *Wright*, it is clear that by the general maritime law:

(1.) The ship was primarily liable for the faults of its navigation; the owner's liability being *through the ship*.

(2.) The owner could, therefore, discharge himself from this liability by relinquishing to the creditor his interest in the ship; in other words he could limit the remedy of the creditor to that part of his property which was invested in the ship, as the representative of his sea-fortune. But against this sea-fortune, after the limitation arose, the remedy of the creditor was absolute.

(3.) This limitation of the creditor's remedy could not arise except by some positive act of the owner, advising the creditor that he could pursue his remedy against the ship without any opposition from the owner. And until such act of "abandonment" the liability of the owner and the remedies of the creditor remained unlimited.

And *Bonlay Paty* makes this clear in contrasting the "abandonment" of Art. 216 of the French Commercial Code with the "delaissement" to the insurer, 1 *Dr. Com. Mer., p.* 293:

"Article 216 does not attach the same effect to the abandonment which it (Art. 369) authorizes; it is the simple declaration of the ship-owner that he makes no claim whatevery to that property; it is a mere turning over of the property to the shipper that he may pay himself if he can out of the *res* solely. and not out of the person of the owner, whose obligation, according to the expression of Emerigon, is rather real than personal."

That this abandonment or quit-claim of the ship must leave to the creditor the whole value of the ship quit-claimed, and as she is quit-claimed, seems obvious.

The sea-fortune of the owner, which he exposes to hypothecation and risk, is his ship, however its value may fluctuate from time to time.

And so by the maritime law, as we understand it to be administered under the Commercial Code of France, the ship-owner, upon the occurrence of a disaster to his ship, bringing him under liability, if he has not renounced his legal right of surrender or abandonment expressly, or tacitly, may make the surrender at any time thereafter. *Caumont Dict. Dr. Mar.*, Tit. Abandon.

From this it must follow that the ship when abandoned to the creditors, (after collision), may be in a different condition, and of a very different value to that when she came out of the collision.

Under the maritime law as administered in France, we understand that the ship-owner who should, after a collision resulting in serious damage to his vessel, repair his vessel fully and for a new voyage, would be held to have elected not to abandon, and therefore, could not thereafter set up his privilege of limitation against the creditor. This we shall consider hereafter.

But however this may be, it is sufficient for our present purpose, that in no continental country, administering the general maritime law, (as we believe), has the owner, in such a case, ever been allowed to discharge himself by any partial abandonment of his vessel to the creditor, or the abandonment of any other interest in her than his entire interest as owner at the time of such abandonment.

The Circuit Court (*Record* p. 8) following the District Court (p. 96), says:

"Under that law (the maritime law), in cases of maritime abandonment, a seizure or a judicial sale of the ship, if procured adversely to the owner, but without resistance by him, has no effect in determining the limit of his liability or deprived him of his right to abandon, though the ship or its proceeds we e thus brought within the jurisdiction of the Court," citing *Ponget Dr. Mar.*, Vol. 2, p. 412.

That a seizure, under the circumstances here stated, may not deprive the owner of his right to abandon may be conceded, but there is nothing in this citation to show that if, under such circumstances, the abandonment is made, the ship *as she then is* must not be abandoned and made subject to the demands of the creditor.

We are considering, of course, the case of an existing ship.

In the case of a ship lost on the voyage by fortune of the sea, the maritime law, as this Court say in *Norwich Co.* vs. *Wright*, and *The Scotland*, 105 U. S., 24, still discharged the owner on abandonment; but such abandonment was only of whatever claim the owner might at the time of the abandonment have in or to her.

We have thus stated the condition of the maritime law as we understand it to have been administered in continental Europe, and particularly under the Commercial Code of France, when the United States Act of March 3, 1851, was passed.

At this time the statutory law of England had affected, in important respects, the administration of the general maritime law in that country, as is shown in the opinion of this Court in *Norwich Co.* vs. *Wright.*

The ship-owner's liability was there, by a construction of the statute by the common law courts limited (in case of collision) to the value of the offending vessel and freight at a certain arbitrary point of time—the point of time immediately before the collision. And where there were several sufferers the ship-owner was permitted to go *into a Court of Equity* for an apportionment of that value among them. But there was no provision for any abandonment or transfer of the ship for the benefit of the creditor at any time, as in the general maritime law.

But under this law the creditor, by collision lien, could pursue the ship to the full extent of the owner's interest in her at the time of condemnation, although changed in value since the time of collision.

In *The Aline*, supra, Dr. Lushington says, after noticing the statutory restriction "limiting the liability of the owner of the ship doing the damage to the value of the vessel itself:"

"Under this modification, therefore, the rights of a person in possession of a decree of this court in a cause of damage are co-extensive with the rights of the owner in the vessel, against which the decree has been awarded. As far as these extend, all the rights of the owner of the damaging ship are clearly a part of the fund to satisfy the successful suitor."

Upon this review of the maritime law as it was administered when the Act of Congress of March 1851 was passed, it is plain that, at that time, the sufferer by collision, in this country, had his remedy against the offending vessel to the full extent of the value of the owners interest in that vessel at the time when such value was sought to be appropriated for his benefit, and we come to the remaining question of our contention:

II. Has this remedy been taken from him by the Act of March 3, 1851?

The sections of the Limited Liability Act of 1851, relevant to this question, are these:

"Sec. 3. The liability of the owner or owners of any ship or vessel, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage, or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively, in such ship or vessel, and her freight then pending."

"Sec. 4. If any such embezzlement, loss or destruction shall be suffered by several freighters or owners of goods, wares or merchandise, or any property whatever, on the same voyage, and the whole value of the ship or vessel, and her freight for the voyage, shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner or owners of the ship or vessel in proportion to their respective losses, and for that purpose the said freighters and owners of the property, and the owner or owners of the ship or vessel, or any of them, may take the appropriate proceedings in any Court for the purpose of apportioning the sum for which the owner or owners of the ship or vessel may be liable amongst the parties entitled thereto. And it shall be deemed a sufficient compliance with the re-

quirements of this act, on the part of such owner or owners, if he or they shall transfer his or their interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any Court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto, from and after which transfer all claims and proceedings against the owner or owners shall cease."

[These sections are re-enacted in the Revised Statutes as follows;

"Sec. 4,283. The liability of the owner of any vessel, for any embezzlement, loss or destruction, by any person, of any property, goods or merchandise, shipped or put on board of such vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending."

"Sec. 4,284. Whenever any such embezzlement, loss or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel and her freight for the voyage is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any Court for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto."

"Sec. 4,285. It shall be deemed a sufficient compliance on the part of such owner with the requirements of this title relating to his liability for any embezzlement, loss or destruction of any property, goods or merchandise, if he shall transfer his interest in such vessel or freight for the benefit of such claimants, to a trustee, to be appointed by any Court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease."]

This statute, it will be observed, does not create any new tribunal for the effectuation of its purpose. Nor does it confer any new jurisdiction upon any existing tribunal. On the contrary it carefully leaves to existing

Courts and ordinary jurisdictions whatever proceedings may be necessary for its due operation. Its principal aim is, simply, to declare, for the guidance of all Courts, a measure of the ship-owner's liability. The method of applying that measure to any particular facts must depend upon those facts and the jurisdiction of the Court making the application.

Our present concern is with a certain set of facts and a Court of certain jurisdiction.

There is, a two-fold purpose in this Statute. One purpose is to limit the ship-owner's liability in every case of loss without his privity to the value of his interest in the vessel and pending freight; the other, to apportion that value among the sufferers by the wrong, in the special case where there are several on the same voyage and the whole value of the vessel and freight is not sufficient to make compensation to each of them.

The principle of limiting the ship-owner's liability to the value of his interest in the ship comes, as we have seen, from the maritime law of continental Europe. The principle of apportioning such value among the sufferers where the claimants are more than one, from the equity system of England.

But it must be conceded, we think, that the rule for measuring the ship-owner's liability which the Statute intends is a rule of uniform application—that is, a rule which will provide the same measure whether the creditor claimant be one or several, or whether the mode of

applying that measure shall be by the specified mode of a "transfer" or any other appropriate proceeding.

In examining the provisions of this statute we will take, for simplicity of illustration, the case of a single sufferer. Suppose, for example, the City of Norwich had carried no cargo on the voyage in question, and that these appellants, the owners of the schooner which was run down by her, had been the only claimants upon her for damage, and that, upon their libel alone, the steamer had been seized and condemned to pay that damage (being, say, $35,000), just as she has, in fact, been seized and condemned to pay the damages of the libellant freighters. By the maritime law of this country existing when the Act of March 3, 1857, was passed, the suffering libellants could, as we have shown, have enforced such decree against the vessel to the full extent of her then existing value. Has the Act in question any such effect, in alteration of that law, that the owners of the condemned vessel could, in the case supposed, release her from that decree of condemnation and wholly discharge her of the lien which attached to her upon the instant of the collision in favor of the injured schooner, by paying into Court the sum of $2,500, the sum of the steamer's value "immediately after collision"?

We understand the Circuit Court to have held in its "conclusions of law" upon which the decree appealed from is based, that the Act has just that effect.

We understand it to have held that the liability of the

appellee, as owner of the steamer, is limited by the Act to the value of the vessel "as she was immediately after the injury was inflicted" (*Record*, p. 9), and as, in the opinion of the Circuit Court, "no liability can rest upon the vessel which does not exist against the owner" (p. 13), therefore, no liability can rest upon the vessel which will not be extinguished by the payment into Court of a sum of money equivalent to "the value of the offending ship in the condition in which she was immediately after the disaster" (p. 8).

That is to say, the Act (in cases of collision) was intended to limit, not only the liability of the owner of the offending vessel, but the liability of the offending vessel itself, also; the limit, in each case, being the value of the owner's interest in the vessel, as that interest was at a certain point of time, namely, immediately after the collision.

So that any "transfer" of the vessel, made "in compliance with the requirements of the Act" for the benefit of the sufferer, must be made at *that* particular time or *as of* that particular time—the creditor or claimant being entitled to receive by such transfer, not the value of the vessel as transferred, but the value of the vessel as that value may have been at the point of time referred to.

This construction of the statute we contest.

It is not easily understood why, if Congress had intended any such radical change of the maritime law of the country—a change so radical that it, in effect, does away with the ancient maritime rule that the maritime

lien travels with the keel, and can only be extinguished by a sale (or its equivalent) of the vessel– the intention should not have been clearly expressed.

And in construing the statute, it should be borne in mind that if its principle is not "tyrannical," as it is said to be in *The Ettrick*, 6 L. R. P., Div. 127, it is, certainly, as is said in *The Benares*, 14 Jur., 581, and approved by Judge Sprague in *Allen* vs. *Mackay*, 1 Sprague 224, "an intrenchment, so far as it goes on the general principle of every man being entitled to recover the whole of his loss from the individual who inflicts it, and, therefore, must not be extended beyond the fair import of its language."

The reasoning of the Circuit Court we understand to be this—that (in cases of collision) the statute (1) measures the owner's liability by the value of his vessel immediately after the collision; and (2) as the vessel's liability is measured by the owner's liability, therefore, (3) the vessel is only liable to the extent of her value as she came out of the collision.

We deny both this conclusion and its premise.

If the freighter obtained a maritime lien upon the vessel as an element of his contract of affreightment and the owners of the injured vessel a like lien upon the instant of the injury, we fail to find anything in the statute to impair the force of those liens, whatever may be the limitation it places upon the owner's liability or the sufferer's remedy *in personam*.

But, however this may be, the premise of this conclusion

seems to us an assumption. We are unable to find in the statute any ground for the inference that it measures the owner's liability, in the case of an existing vessel, by the value of the vessel as it may have been immediately after the collision.

On the contrary we submit that the course of reasoning of the Circuit Court should be reversed, and the premise should be that the statute expresses but one measure for the owner's liability, and that is the value of the vessel when it shall be transferred for the benefit of the creditor; and from this premise the only sound conclusion is, that where there is an existing vessel, the owner's liability is, therefore, the value of that vessel when either the vessel itself or its representative value shall be appropriated for the benefit of the creditor.

In *Norwich Co.* vs. *Wright* it was settled, we grant, that the owner's liability is, by the statute, to be measured by the value of the vessel *after* the collision, as in the general maritime law, and not by its value *before* the collision, as in the maritime law of England.

But that the time after the collision when this measure of the owners' liability is to be taken was, by that decision, fixed, arbitrarily, at the point of time *immediately* after the collision we deny.

And we submit that a fair construction of the statute does not justify such an inference from its provisions, nor is such an inference in harmony with the general maritime law of Europe from which its rule of liability was confessedly derived.

Now, in *Norwich Company* vs. *Wright*, it was not without some pains that this Court ascertained the intention of Congress as to the measure of the ship-owner's liability provided by the statute.

But it did discover the key to that intention in "the provision for the ship-owner to discharge himself, *as in the maritime law*, by giving up the vessel and freight," (p. 126.)

The provision referred to is that in the 4th section of the original act, (R. S., § 4,285,) which provides for a "transfer of the owner's interest in the vessel and freight to a trustee for the benefit of the claimant or claimants, *from and after which transfer all claims and proceedings against the owner or owners shall cease.*"

But if this provision of a transfer is decisive evidence, as the Court found it to be, of the intention of the statute to measure the owner's liability by the value of the vessel at some time after the collision, is it not with greater reason decisive evidence that the statute intends the absolute liability to remain until the owner shall either transfer the vessel "in compliance with the requirements of the act," or do some other equivalent thing?

And does it not necessarily follow that the equivalent thing to do must be something which will give to the claimants the value of the vessel at the time the thing is done?

And, therefore, if the owner may pay value into Court instead of transfer the vessel to a trustee, that such value must be the value of the vessel as she then is when the payment into Court is made?

If this is not so, the statute is open to the construction, which clearly must be rejected, that it provides two differing measures of liability—one furnished by the value of the vessel when transferred in specie, and the other by her value in money at some other time.

For that the statute intends by the transfer, which it declares to be "a compliance with the requirements of the act," a *present* transfer, and not a transfer *as of* some other time is, we submit, clear from the language used; and so it has been construed by this Court.

Such is plainly, we submit, the meaning of the opinion in *Norwich Company* vs. *Wright*, where it is said:

"If the vessel were libelled, and either sold or appraised, and her value deposited in Court, this sum, together with the amount of freight, (when proper to be added,) would constitute the *res* or fund for distribution."

Indeed from the decision that the value of the vessel which measures the owners' liability is its value after the collision, and not before, because of the statute provision of transfer, it necessarily follows that the transfer intended by the statute is a present transfer. For if the provision is open to the construction that the transfer may be *as of* any past time, it may as well mean a time before the collision as after.

But this is put beyond question in the opinion by the same learned judge in *The Benefactor*, 103 U. S., 246:

"The counsel for the appellees is mistaken in supposing that the value of the offending vessel at the time of the

collision furnishes the only criterion of the amount for which her owners are liable. In *Norwich Co.* vs. *Wright*, we held that the owners of the offending vessel could, under the statute, discharge themselves from personal liability by surrendering the ship and freight. This would imply that the value of the ship at the time of surrender (with the addition of the pending freight), if the surrender is made in a reasonable time, would furnish a proper criterion of the amount of liability."

And so in *The Scotland*, 105 U. S., 24, while it was held that the statute provides two modes for its effectuation, one by a transfer of the ship and freight, and the other by an apportionment of value, and that the owners, in that case, were entitled to avail themselves of the latter mode, notwithstanding they had not made any transfer, still they were required "to pay the value of the ship's strippings and remnants into Court," to be "distributed *pro rata* amonst the claimants"

And to the same effect is the opinion of Judge Kane in the leading case of *Watson* vs. *Marks*:

"Such a transfer is merely the formalization of a trust existing before, a trust now to be administered by the Court, instead of the ship-owner, an act of law, or under legal sanction, which passes the legal title out of the owner, but leaves the creditors of the vessel in the same plight against her as before."

In *Petition, &c.*, 17 Blatch., 230, it is said:

"It may, perhaps, be conceded that if after the vessel was raised and repaired the owner had sought the protection of the statutory limitation by transferring her to a trustee, the creditors would have been entitled to her, as

she then was in her improved condition. This, not because her value then was the value for which they were, at all Courts, responsible, but by force of the transfer."

How by force of the transfer? Surely a transfer which the statute declares to be a compliance with its *requirements* cannot be a transfer which will carry to the creditor something which he was not *entitled* to receive, or anything which he could only receive by the grace of the owner.

If the transfer has any force by the statute whatever, it must be the force given to it by the Court in *The Benefactor*. It must carry to the creditor the value of the vessel at the time when the limit of the owner's liability arises —which is not until the transfer is made. Then, and not till then, his liability becomes wholly *real*, and ceases to be at all *personal*.

Now if this is so, that the only *expressed* intent of the statute as to the proper criterion wherewith to measure the owner's liability, is to be found in this provision for a transfer, and that the intent thus expressed is that the value of the ship at the time of such transfer furnishes such criterion, does any implication arise from any other provision of the statute which is in conflict with such intent?

The only other provision of the statute concerning (as we conceive) the single creditor, whose case we are now considering, is that of Section 3 of the original Act—the general provision that the liability of the owner, &c.,

"shall in no case exceed the amount or value of the interest of such owner or owners respectively in such ship or vessel and her freight then pending."

But this declaration is in close harmony with the provision for a transfer. If the provision for a transfer requires the owner to transfer his whole present interest in the vessel for the benefit of the creditor, the inference is necessary and unavoidable that this declaration means that in the case of an existing wrong-doing vessel which can be transferred, the liability of the owner shall not exceed the amount or value of the interest therein which the owner is required to transfer if he elects to transfer anything.

That is to say, the measure of the owner's liability is his interest in that ship or vessel which by the maritime law is responsible in specie for the injury—the vessel which is bound by the tacit hypothecation of the maritime lien to pay "with its whole value" the losses resulting from its fault—and the vessel which the owner may transfer to a trustee for the benefit of his creditors if he desires to comply with the requirements of the statute. And so long as that vessel exists and is liable to admiralty seizure at the suit of the creditor or to "transfer" by the owner, so long it continues, with its present value, to measure the liability of its owner.

The declaration of Sec. 3 is, therefore, only the declaration of the maritime law that the ship-owner, in the cases there mentioned, may, if he chooses, restrict his creditor

to the remedy (in effect) which the maritime law gives him *in rem*—against the vessel, or, as it is expressed in *The China* supra the "primary liability" is regarded as upon the vessel and the limitation "*limits the creditor to this part of the owner's property.*"

For the statute, it will be observed, makes no attempt to interfere with the ordinary jurisdiction of the admiralty court *in rem.* Indeed this provision for a transfer "to a trustee" seems to have been intended for the purpose of affording the State or common law courts (and the Act of 1851 had its origin in States having similar legislation) a method of applying the statute analogous to that which is peculiar to the Admiralty Court.

We have considered the sections of the statute particularly relating to the case of a single creditor, whose lien claim may exceed the value of the vessel he is proceeding against. But the section of the statute providing, with distinctness, for an apportionment, in the case of several claimants, of "the sum for which the owner may be liable among the parties entitled thereto," is also in entire harmony with the position we have sought to maintain.

What is the sum here referred to? Obviously the sum which is "not sufficient to make compensation to each" of these parties—and that sum is the "whole value of the vessel and freight for the voyage"—and that vessel is the vessel which, by the maritime law, is bound, and as she is bound, to make that compensation. And this is the value which, as we have seen, the creditor is entitled to receive by the statutory transfer.

The force of this section is in its first paragraph declaring, in effect, that the whole value of the vessel shall be distributed equitably among *all* the lien creditors instead of being left to the "prior petens" of the maritime law. The paragraph following only permits what the parties interested could do without it—that is, avail themselves of any appropriate jurisdiction for the enforcement of the rights there declared.

This section seems to contemplate a vessel existing at the time of the apportionment and, in the original act, the provision for the transfer, in specie, was a part of this section as if specially germane to the provision for the apportionment.

In *The Scotland* this Court has held, that this section authorizes the payment of value into Court, as the basis of the apportionment, as well as the transfer of the vesse in specie. But this value, must clearly be the same value as that contemplated in the case of the single creditor—the value of the vessel through which the owner is liable and which he has the right to transfer. Otherwise, we have the case rejected by the learned Judge in *Petition, &c.*, 17 Blatch., 231.

"The owners have their option of these two modes. They may give up the vessel and freight or they may retain them and pay their value. But the measure or limit of liability in each case is the same. Very plainly it is not intended that the creditors shall obtain more when one mode of proceeding is adopted than when the other is followed."

Very plainly not. And let us add that it is equally plain that it cannot be intended that the creditors shall receive any less by one mode than by the other. And therefore the value to be paid must be the value of the vessel for the transfer of which the payment is a substitute.

And this, we submit, is the clear indication of the Admirality Rules (54–57), passed upon the decision of *Norwich Co.* vs. *Wright*, where it is provided that when any ship is libelled, &c., and the owner shall desire to claim the benefit of the statute, he may file his libel or petition in the Court where the vessel is:

"And thereupon, said Court, having caused a due appraisement to be had of the amount or value *of the interest of said owner or owners, respectively, in such ship or vessel* and her freight for the voyage shall make an order for the payment of the same into Court, wherever the same shall be ordered; or if the owner or owners shall so elect, the said Court shall, without such appraisement make an order for the transfer by him or them of *his or their interest in such vessel* and freight to a trustee to be appointed by the Court under the fourth section of the act."

Manifestly the interest which is here directed to be appraised is the same interest that may be transferred. And if the transfer is required to be of the owner's present interest, the appraisement must necessarily be of the same interest.

In this discussion we have purposely kept in mind the case of an existing vessel—existing at the time when the

application of the statute is sought. For that is the case of these appellants.

Indeed their case is that, not of an actually existing vessel merely, but of such a vessel lying under actual condemnation of the Admiralty Court.

And the question concerning these appellants is, simply, whether this statute has the effect to discharge a vessel *so* situated from its obligations in any other way than by the usual way in which such obligations may be discharged in an Admiralty Court.

Whether in the case of a lost vessel, as in the case of *The Scotland* or a vessel which its owner has parted with or which has been damaged by subsequent disaster, the statute is to be applied in the spirit, or according to the rules, of the maritime law and what are the appropriate proceedings for such application, are questions not involved in this case, and, therefore, do not call for our discussion of them.

We are contesting here the ruling of the Circuit Court (upon the facts of the present case,) that in the case of a vessel surviving a collision the statutory transfer of that vessel (or its equivalent value) which may be thereafter made by the owner in discharge of his personal liability, may be made *as of* the time immediately after the collision and not as the time when such transfer or payment is actually made.

In conclusion of this point we deny that the rule of limitation we have contended for "is a shifting one varying as to the times when the protection of the act is to be sought."

The rule does not shift. It uniformly measures the liability of the ship-owner by the value of his vessel which represents his sea-fortune. His sea-fortune may shift as his land fortune may shift or the fortune of any debtor, whether on land or on sea, may shift. But this is not for him to complain of. Nor is the vigilance which it may impose on the creditor any hardship. And no one else is interested.

But whether the rule shifts or not it is the time-honored rule of the maritime law which this Court in *Norwich Co.* vs. *Wright* and, again, in *The Scotland* have determined to be the rule in the spirit of which the statute is to be administered.

We, therefore, conclude that the Circuit Court erred in not so interpreting and applying the statute as to entitle these appellants to a share in the value of the vessel, as that vessel was when she was condemned or when the owner filed his petition under the statute, which value was, confessedly $70,000.

SECOND POINT.

The District Court of the United States for the Eastern District of New York, was without jurisdictional power to do anything else, upon the Appellee's petition, than to apportion among the claimants, the stipulated value of the condemned steamer, that is, $70,000.

The appellants *Wright and others*, are citizens and residents of Connecticut. The appellee is a corporation of the same State. How comes it that they are in controversy in the Admiralty Court for the Eastern District of New York—the appellants being brought there by a simple order of newspaper publication or other notice only appropriate to an admiralty proceeding *in rem*?

Clearly there is no suit *in personam* here—nor any jurisdiction obtained over the parties by virtue of any process *in personam* either under the Admiralty rules or the Statutes.

As clearly, the jurisdiction exercised by the District Court is only maintainable by its possession of some *res* (*Exparte Slayton*, 105 U. S., 451,) and that *res* can be none other than the steamer *City of Norwich*, which had been seized by that Court September 12, 1866, and condemned by that Court to satisfy the liens upon her, December 23, 1869.

Now what is the jurisdictional power given to the District Court by the possession of this *res*?

This Court has defined it in *The Rock Island Bridge*, 6 Wall, 215: "The only object of the proceeding *in rem* is to make this right (of lien) wherever it exists, available—to carry it into effect. It subserves no other purpose. The lien and the proceedings *in rem* are, therefore, correlative—where one exists, the other can be taken, and not otherwise."

But when the appellee's petition was brought, June, 1872, the District Court had exhausted this jurisdiction, of making the right of the libellant's liens available, by its decree of condemnation of December 23, 1869. The liability of the vessel had become *res adjudicata*. *The Benefactor*, 103 U. S., 249.

But if this be not so, where in the ordinary jurisdiction of the Admiralty Courts of the United States is to be found the power, because of the possession of the ship, to require her lien creditors to go into such district as the owner sees fit to carry his ship, and, upon his petition, adjudicate upon the various liens attaching to her, and discharge the ship from their obligation? If such jurisdiction does exist, the ship-owner of Connecticut, might take his vessel into the District of Oregon, as well as the District of New York, for the purpose of relieving her of the inconvenient claims of her creditors. But this certainly cannot be under the admiralty jurisdiction of the United States, nor was it upon the claim of any such jurisdiction that the appellee went into this District Court, for the Eastern District of New York.

The only other jurisdiction arising to the District Court, as a court of admiralty, by the possession of this *res* was that which is clearly characterized in *Norwich Co.* vs. *Wright*, p. 123.

"The act does not state what Court shall be resorted to; but that the parties, or any of them, may take "*the appropriate proceedings in any Court* for the purpose of apportioning the sum for which, etc." Now, no Court is better adapted than a Court of Admiralty, to administer precisely such relief. It happens every day that the proceeds of a vessel, or other fund, is brought into that Court to be distributed amongst those whom it may concern. Claimants are called in by monition, to present and substantiate their respective claims: and the fund is divided and distributed according to the respective liens and rights of all the parties."

It is the power of distributing or apportioning a fund or *res* already in existence, and so completely in existence, that nothing remains to be done respecting it, but to distribute it.

In such case, and such case alone, has the District Court, as a Court of Admiralty, any jurisdictional power, by a proceeding *in rem*, to make an apportionment of any fund or distribution of any property.

Now the only *res* in existence in the District Court when this petition was brought, June 13, 1872, was the

ship as she there lay condemned, or her representative, the $70,000 stipulation.

The *res* which was in fact apportioned and distributed by the District Court, the sum of $2,500, never had any existence until Jan. 4, 1879, and then it was the outcome of a long controversy between these Connecticut appellants, on the one side, and this Connecticut appellee, on the other, in the District Court for the E. District of New York.

This sum of $2,500 was the product of a proceeding which was, in no sense, a proceeding *in rem*. The learned Judge of the District Court (*Opinion*, 6 Ben., 337, 338,) characterizes it as "rather partaking of the character of an action *in personam*," and an action entirely independent of the suit *in rem*, and, therefore, not requiring any fund in Court, nor any stipulation or anything else to be resorted to for the creation of a fund as the basis of jurisdiction.

But this is not the view taken by the Court, in its decision of *Norwich Co.* vs. *Wright*, of the jurisdiction of the District Court necessary to be invoked by the appellee if he determined to apply to that Court for relief from the judgment received against it by these appellants.

Its mandate suspended further action so that the appellee might "take proper proceedings in the District Court of the E. D. of New York for *apportioning* the damage sustained by the various parties in this case."

Its particular directions will be found at p. 124. "But

in order to proceed regularly, the Court must have possession of the limited liability fund—that is, the proceeds or value of the ship and freight. It cannot distribute a fund of which it has not the possession. If the vessel were libelled and either sold or appraised and her value deposited in Court, this sum, together with the amount of the freight (when proper to be added), would constitute the *res* or fund for distribution. The case would then be free from difficulty."

Is not the case now before this Court just this case which is "free from difficulty?" But the Court continues:

"But the present case is a libel *in personam* in the District of Connecticut, and the steamer has, in fact, been libelled in the Eastern District of New York, and she, or her value, is detained there. *The respondents have not paid, or offered to pay, the fund into the District Court for the District of Connecticut, nor do they allege that they have applied to the District Court for the Eastern District of New York, where the fund is, to apportion the damages incurred.* Had they done this the Court might have acquired jurisdiction of the case and made it the duty of the District Court of Connecticut, on being certified of the fact, to suspend proceedings and leave the libellants to present their claim in the Court of New York."

Can language more explicitly declare that the jurisdiction of the District Court for the Eastern District of New York, the exercise of which these appellants were required

to wait for, was based upon its possession of the *res*, or fund which had already been created by the appraisement of the libelled vessel? and that it was because of its possession and jurisdiction over that fund that the appellants could be required to go into that district to receive their proportionate share of it?

The Act of 1851 does not confer upon the District Court any new jurisdiction; or enlarge, in any degree, its accustomed jurisdiction.

Its 4th section simply declares that where (in a case within it) there are "several freighters or owners of goods, wares or merchandise, or any property whatever, on the same voyage, and the whole value of the ship or vessel and her freight for the voyage shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner or owners of the ship or vessel in proportion to their respective losses."

The power to make such an apportionment of the sum for which the owners are liable, and which is, manifestly, "the whole value of the ship or vessel and her freight," is not conferred upon the District Court, or any other Court, by this Act. The statute, simply, recognizes, the jurisdiction of apportionment as an existing ordinary jurisdiction of courts The only jurisdictional fact which it does require is that "the *whole* value of the ship" shall not be sufficient to make compensation to all claimants. Obviously, that fact disappears when the liens or liabilities of the ship are found to be less than its whole value.

Whether or how it has come to pass that the Admiralty Courts of the United States possess the jurisdiction given, in the first place to the High Court of Chancery by 17 & 18 Vict., Ch. 104, and afterwards to the High Court of Admiralty by 24 & 25 Vict., Ch. 10, for *creating a fund* for the purpose of apportionment in discharge of the ship-owner's liability, it is not necessary for us to discuss. Our present contention is that no such jurisdiction results from the ordinary Admiralty jurisdiction *in rem*, the foundation of which jurisdiction is the arrest of some actually existing *res* which some person has a right to have sold for the satisfaction of his lien upon it. And the jurisdiction to sell that *res* can only be supported by the condemnation of the *res* itself, and then the *res* sold must be the *res* condemned.

In England the Court of Admiralty, within its ordinary jurisdiction, could not entertain a suit for determining and apportioning among several claimants the liability of the owner, as the Chancery Court could do by the Merchant Shipping Act, s. 104.

The Act 24 and 25 Vict. c. 10, gave the Admiralty Court that jurisdiction when the "ship or vessel or any proceeds thereof" are under arrest.

But even under this statute it is not clear that the jurisdiction obtains unless the ship itself has been arrested and it is certain that it does not obtain until the sum prescribed by statute has been actually paid into Court, as the basis

of jurisdiction, and then that *res*, whether the ship or its proceeds or the statutory substitute is apportioned.

James vs. *London & S. W. R. Co.*, 7 L. R. Exch., 287.

Nor under the construction of the statute contended for in this brief is any such special legislation as that of Great Britain necessary. And the absence of any provision for a similar jurisdiction in our statute seems to us a strong reason for that construction.

Under such construction of the statute, if the vessel is libelled or the owner is sued *in personam*, his vessel being still in existence, he may transfer into Court the vessel or its value, and the sum may be apportioned (in a case calling for apportionment) under the ordinary process of the Admiralty Court, and the judgment will be a bar to any further proceeding against them.

If the vessel is lost and the owner is thereby discharged, he has only to plead that loss in any action *in personam* and he receives all the benefit he can have from the statute.

THIRD POINT.

The appellee became bound by the proceedings taken upon its petition of October 2, 1866, (Record page 27), for the benefit of the Act of March 3, 1851, resulting in the stipulation of March 28, 1867, to pay into Court the sum of $70,000 for apportionment among the lien-creditors.

This petition, although (for reasons hereafter to be indicated), avoiding any actual transfer of the owner's interest in the vessel, or its value, for the benefit of the vessel's creditors, was, nevertheless, brought in claimed compliance with the requirements of the Act of 1851 and sought to bind the lien creditors, as the decree passed upon it did actually bind them, to a valuation of the owner's interest in the vessel at the sum of $70,000, for all the purposes of that act.

It offered a stipulation for the amount of the owner's interest in the vessel and freight, and prayed upon the execution of such stipulation for a discharge of the vessel, as well as the owners, from all liability in accordance with the Statute.

The report of the case (*The City of Norwich*, 1 Ben., 93), shows that the petitioners urged upon the Court that "This motion contemplates the end proposed by § 4. Giving such a bond may be regarded as equivalent to acting under the provision authorizing the owners to assign the boat for the benefit of all parties."

Upon this petition the Court allowed the stipulation to be filed.

And thereupon passed its order of Jan. 26, 1867, (*Record* p. 29,) "that upon the entering into and filing of such stipulation, the said steamboat, her engines, boiler, tackle, apparel and furniture be *discharged from all liability* for losses and damages occasioned to all the parties for where benefit the said stipulation is given. And it is further ordered that the said libellants and all other persons and parties having liens on the said steamboat, her engine, coiler, tackle, apparel and furniture, for loss or damages by reason of such collision and fire, be and they are hereby declared to be *bound by this order.*"

A discharge of the owner's personal liability, as distinguished from the liability of the vessel, was denied by the Court, but the bond was given and taken in pursuance of the foregoing order, discharging the vessel from all liability, and, therefore, became a *res* or fund, respecting which nothing more remained to be done but to appropriate it for the benefit of the lien claimants.

The value of the owner's interest in the vessel which could be, under the Statute, appropriated for the benefit of its creditors, was, by this order, adjudicated at the sum of $70,000, and the parties were thenceforth estopped to deny it.

From this decree, discharging the vessel from its liability but not discharging the owner from any liability beyond the value of the vessel and freight, no appeal was taken.

And the owner should not have been permitted to re-open that question for another adjudication by another independent petition. But if so permitted, it should have been held to the prior adjudication upon all other matters than the simple question of such discharge, and should not have been allowed to cancel or withdraw the stipulation which had been given and taken for the purposes of an apportionment, whenever the liability of the vessel should be established.

FOURTH POINT.

The Circuit Court, having adopted as the measure of the owner's liability the value of his interest in the vessel at the time immediately after the collision, and, as reduced by it, erred in its computation of that value.

It should have found that value as of the time immediately after the collision and before the fire had supervened: and either have computed that value as the value before the collision, reduced only by the damage caused by the collision, or the value after the fire increased by the insurance received on account of the fire.

Between the collision and the fire there was a definite interval of time (p. 3). Soon after the disaster the owners of the steamer brought suit upon its fire insurance policies against the Western Massachusetts Insurance Company in the Circuit Court of the United States for the District of Connecticut, in which suit the damages by the fire were, upon the claim of the owners, determined to be $69,000, and the damages by the collision $15,000 (*Record* p. 5).

The suit referred to is reported 6 *Blatch.*, 241, and in error 12 Wall, 194, and its record was put in evidence by the appellants (p. 2).

In that case it was distinctly found, as the basis of the adjudication and upon the claim of the present appellee, (as stated in the opinion of this Court by Mr. Justice

Strong,) that: "The effects of the fire are conclusively distinguished from the breach in the steamer's hull, and the filling of the hold with water. The damages caused by the several agencies have been discriminated, and its proper share assigned to each. It is an established fact hat the damaging effect of the water, independent of the fire, would not have reached beyond sinking of the steamer to its upper deck, when she would have been saved from further injury." (p. 199.)

And it was clearly shown by the opinion that the fire was the "efficient, predominating cause" of the damage to the steamer, and just as distinctly so as if the fire had occurred on a different day from the collision (p. 198.)

The additional finding of the Circuit Court, in the present case, that "the fire was a direct consequence of the collision and inseparable from it," must be held to a sense consistent with the finding and adjudication just referred to. It may mean, that but for the collision the fire would not have occurred, as the collision would not have occurred but for some pre-existing cause. But it cannot mean that the injury done by the collision is inseparable from the injury done by the fire. For the $49,283.07, which has been adjudicated to the appellee because of such separation, is an incontestable proof to the contrary.

Now the rule of liability adopted by the Circuit Court is this—that such liability must be measured by the value of the vessel at the moment of time immediately after the

collision, irrespective of what may happen to the vessel, whether injured or bettered, after the collision (p. 8, fol. 19),—that is, the value of the vessel as reduced simply by the damage done by the collision; and that a sum of money representing such measuring value may be paid into Court in discharge of such liability.

And this rule is justified by the Circuit Court because it is an arbitrary rule, furnishing by its fixed period of time an unshifting *measure*. Such is the principle of the English statutes fixing the measure of liability at the arbitrary sum of £15 per ton of the vessel, and in *Brown* vs. *Wilkinson*, 15 M. & W., 391, under the Stat. 53 Geo. III, the rule then in force was defined as "the value at the moment the loss commences by the collision with the defendant's ship whence the injury; *and it is not to be reduced by the consideration that the defendant's vessel is about to founder at which time it really is of no value.*"

Upon the foregoing facts, therefore, the appellants claimed in the Circuit Court, that if this measure of the vessel's liability by its value at the fixed period of time immediately after the collision, was the correct rule, the appellants were entitled to have that value appraised *as of* that period of time, that is, the period of time between the collision and the fire; the fact of the finding being that such interval of time occurred, (p. 3.)

The Circuit Court without really contesting the soundness of this claim, over-ruled it for the following reason; (p. 10.)

"But if this were conceded the result would be the same. Plainly the vessel was worth no more then than she was after she was sunk. She was then a vessel inevitably doomed to partial destruction by fire and to immediate foundering. * * * Now had the owners transferred to a trustee the boat at the instant after she came in contact with the schooner and before the water had risen within her sufficiently to drive her fires out from the furnaces, confessedly they would have been discharged, but what would the trustee for the sufferers, the owners of the schooner and the freighters have taken? Surely only a vessel in process of destruction by fire and destined to sink."

Now the case supposed by the learned Court affords an apt illustration for our contention in this respect.

What the trustee would take, in the case supposed, would depend upon how the rule of the statute as determined by the Circuit Court is to be understood.

(1.) If that rule is to be understood as we have already indicated—a rule arbitrarily measuring both the owner's and the vessel's liability by the value of the vessel as it is reduced by the collision—then, in whatever mode the limitation is sought, the sufferers should be entitled to receive the sum of the value of the vessel before the collision only reduced by $15,000, the amount of damage by the collision.

By such a rule it is immaterial what may happen to such vessel afterwards, or when it may happen; whether a fire may break out, the next hour or the next day or the next week.

The question is not what the owner's interest in such

a vessel would *sell for;* for it is not the owner's interest in the vessel when transferred that the sufferers are by this rule entitled to. The only question is how much *value* is the owner bound to pay, upon an arithmetical computation of the value of the vessel before the collision less the damage caused by the collision.

But if a "cash value" is here intended, the rule suggested by the Circuit Court of ascertaining that value—by appraising the vessel as "in process of destruction by fire and destined to sink"—is not the proper rule.

The proper rule is that sustained by the Court in *Trans. Co.* vs. *Ins. Co.*, and by reason of which the appellees recovered their fire insurance money.

This "cash value," it was conceded in that case, (6 *Blatch*, 253,) by the owners should be arrived at by deducting the amount of damage by collision from the cash value of the vessel before the collision, irrespective of the threatened danger.

(2.) But if the rule adopted by the Circuit Court is not to be understood as we have indicated, and if it is to be taken, (as intimated by the illustration of the case supposed) as meaning that the sufferers would be entitled to the value of the owner's interest in the vessel, as that value might have been in the public market, when transferred—then, in the case supposed of a transfer during the interval between the collision and fire, we deny that the trustee

would take only the value of a vessel in process of destruction by fire.

The trustee would take all the interest which the owner had in the vessel at that time, and the trustee and the lien claimants would be, thereafter, possessed of the whole interest in the vessel at the time when the fire supervened, and the subsequent loss occurred.

The benefit of the fire insurance policies would, therefore, belong to them. If the fire insurer had, thereafter, elected, as, in the case of fire insurance, the insurer has the right to elect, to repair the vessel, instead of paying the value of the repairs to the insured, it would be the sufferers by the collision, and the then owners of the property who would receive the benefit of such repairs.

And the former owners of the vessel who might recover the insurance money, would receive it as trustees for them to whom the vessel equitably belonged at the time of the loss.

1 *Phil. Ins.*, No. 104, p. 65.
Wyman vs. *Wyman*, 26 N. Y., 353.
Burbank vs. *Ins. Co.*, 4 Fost., 550.
Parry vs. *Ashley*, 3 Sim., 97.

And so if the owner, instead of making a transfer of the vessel, during that interval of time between the collision and fire, had paid into Court "the amount or value of the interest of such owner" in the then existing vessel, such value would include the right to receive the fire insurance.

The value contemplated is, we submit, the value *to the owner*. It is *his* interest that is to be valued, and that the value of his interest in the vessel included the sum of $49,028.07 insurance money, which he has received by reason of such interest, seems incontestable, and, clearly, the creditor would be entitled to an equivalent value to that he would receive in case of a transfer.

FIFTH POINT.

But even if the measure of the owner's liability adopted by the Circuit Court shall be intended to be as of the time immediately after the fire, or when the steamer was lying at the bottom of the sound, the computation of that value by the Circuit Court is still erroneous. The value of the insurance should have been carried into the valuation of the owner's interest.

This question as affecting the case of marine insurance has been so exhaustively discussed in cases now under consideration by this Court, that we should leave it without an additional word but for the suggestion sometimes made that a distinction exists in the case of fire insurance.

1. Every reason for holding that the value of the owner's insurance should be held to represent and replace the value of the *res* which has been lost by the owners' fault, through a marine peril, obtains with equal and, in some respects, greater force where the loss is by fire.

The absence in general of any distinction, as affecting the equitable rights of parties, between the two classes of insurance, is illustrated in *Hall* vs. *R. R. Company*, 13 Wall, 367, where this Court held that the insurer of goods against fire was entitled to be subrogated to the shipper's remedy against the carrier as in the case of marine insurance. And Mr. Phillips says that equity will make an assignment of the proceeds of insurance to the assignee to whom the subject matter or interest insured is assigned, as well in a fire insurance as a marine or life insurance. 1 *Phil. Ins.*, No. 77.

The contract of fire insurance is no more a personal contract (in the sense of not being an interest in the thing insured) than the contract of marine insurance.

Neither are such except, as in any given case, they are by the law made to be such.

In either case, if the assigned sells the subject of insurance agreeing to stand trustee for the vendee the law will thereafter require him to hold the policy as such. 1 *Ph. Ins.*, No. 89.

And so in the case of a general assignment after loss by fire the law will carry the interest to the creditors, notwithstanding the contract against assignment. 1 *Ph. Ins*, No. 107, 108.

Indeed the characteristic feature of fire insurance to which we have before adverted—the right which the insurer ordinarily has to pay the loss by reparation of the thing insured—is a strong evidence which is not to be

found in marine insurance that the law regards the object of the insurance as the repair of the damage and the restitution of the thing insured to its value before the loss. *See cases before cited.*

Stat., 14 *Geo.*, 3, *c.* 78.
Angell Ins., § 268.

2. But the appellee is, by its contention here, estopped from claiming that the present loss was a fire loss. Its position is that the fire was inseparable from the collision and, therefore, notwithstanding its recovery under the fire policies, that its loss was actually by marine peril.

If it abandons this ground it must concede that the Circuit Court, upon its interpretation of the Statute, erred in not computing the value of the owners' interest as of the interval of time between the collision and the fire.

3. But, after all, the true interpretation of the Statute, as we conceive, does not give any place to the distinction suggested.

The Statute, it is clear, prescribes as the limit of the owners' liability "the amount or value" of his "interest" in the vessel and pending freight. And it is this "interest" of the owner that must be surrendered for the benefit of the claimants in order to obtain for the owner the advantage of the statutory limitation.

The maritime law requires the abandonment of the vessel in *specie*, and the creditor as we have seen takes the

vessel as she is transferred in specie. And, therefore, the argument obtains under the maritime law, that the cred itor is entitled to nothing but the vessel in specie and that insurance money is no part of a vessel.

But if the Statute of the United States is to be constructed as limiting the liability of the owner (in case of collision) by the value of his interest in the vessel at the time "immediately after the disaster" or "at the end of the voyage" or at any other time than when the owner entitles himself to the statutory privilege by surrendering to the creditor his interest in the vessel, then it must be conceded that its measure of liability is not the measure of liability of the maritime law.

It is, on the contrary, a measure of its own and peculiar to the maritime system of the United States.

And it is a *measure* merely, by which the sum which the owner is required to pay, in discharge of his liability, is ascertained by ascertaining the value of the owners' interest in the vessel at the assumed time.

But it is the value of the *owners'* interest in the vessel; manifestly the value of that interest *to him.* For he is the one whose liability is to be measured by the value. And he is the one who is to pay the value into Court.

That the owners' right to the proceeds of the insurance depends upon his interest in the subject matter of the insurance must be conceded. Especially in fire insurance the wager policy is not allowed. And, therefore, *his* interest in the vessel, unquestionably, has attached to it the

right to the proceeds of the insurance, and, cannot be justly valued without including that right as an element of the valuation.

Whether as between him and the insurer this right can be transferred by him to another, is of no consequence. That question does not effect the value of *his* interest which is the measure of the sum *he* is to pay.

SIXTH POINT.

Assuming the construction given to the statute by the Circuit Court, and that it measures the liability of the ship (in case of collision) by its value immediately after the collision, the appellee is barred by its waiver from prosecuting the present petition, brought June 13, 1872: and the Circuit Court erred in holding otherwise.

By the maritime law, the right of the ship-owner to discharge himself from personal liability by abandoning the ship, is by no means, an absolute right.

Although, in a general sense, it is for him to determine *when* he will exercise the right, and his discharge cannot take effect, until he does exercise it, he is, nevertheless, in the case of any disaster to his ship, held to a course of conduct consistent with an intention to abandon, if he shall thereafter seek to exercise the right.

And if his conduct respecting his vessel after the disaster is inconsistent with such intention, he is held to an election not to exercise it, and cannot, thereafter, assert it in opposition to the creditor.

Thus *Caumont* says *Dict. de dr. mar, Tit. Abandon* 87: (cited by Judge Benedict, 9 Ben., 410.)

"On principle, since the law fixes no time for the surrender, it follows that the ship-owner, as long as he has not renounced his legal right expressly, *or tacitly*, can make this surrender at any time, and at any state of the cause, after the ship has foundered, or been totally lost, or sold after a misfortune at sea."

"The law fixing no limit for the exercise of the right of surrender, it ought to be admitted, *as long as no fact has intervened from which one can infer that the owner has renounced the exercise of his right.* Such a renunciation cannot be inferred from a defence on the merits, if the surrender has been proposed by the same pleadings as the defence on the merits." § 91.

Therefore, a sale of the vessel, by the choice of the owner, and not by misfortune of the sea, is evidence of his intention to renounce the right, § 92.

And such it would seem would be the inference if he should employ the vessel on a new voyage, after claim had been made upon him. *Couder* Dict. Dr. Com. Tit. *Amateur.*

And, although a seizure of the vessel adversely to the owner, would not prevent his right, yet, if the seizure was followed by an adjudication, his dispossession was held to be complete, and he could no longer abandon what was

not his. *Bedarride*, Com. Com. Code (Paris 1859) T. 1, Tit. 3, Art. 216.

The Statute of March 3, 1851, enacts the rule of the maritime law respecting the ship-owners liability, as has been well settled by this Court. It should, therefore, be administered in the spirit of the maritime law. And, upon principle, the creditor, against whom the ship-owner desires to set up a privilege in such derogation of the creditors common right, should be entitled to hold him in its exercise to a line of conduct closely consistent with his intention to assert the privilege.

If the ship-owner, upon a liability arising from the wrong doing of his ship, has the election to limit that liability, and, therefore, the remedy of the party injured, to his interest in the ship, it is right that, as in all cases of election affecting the interests of others, he should be held to make that election promptly, and when made to be held to it as made. It is not right to allow the creditors to be misled by any "fast and loose" action on his part, and such conduct should, in justice, forfeit the owner's right to the statutory privilege, as it clearly would do under the maritime law.

It was doubtless this consideration that led the learned Judge in *The Alpena*, 8 Fed. Rep., 283, to say:

"When each such voyage is ended, it is for the owner to decide whether the losses have been such as to make it expedient for him to invoke the protection given by this act of congress. If he does not decide to do this, but

sends his ship upon a new voyage, he thereby concedes his personal liability for damages incurred on the past voyage."

Administering the statute in this spirit the appellee is without standing in this Court, whether it be construed as enacting the rule of the maritime law, as we understand it, or the rule declared by the Circuit Court.

1. The appellee was careful to do nothing whatever consistent or reconcileable with an intention to transfer or abandon its interest in the steamer, or to pay its value into Court for an apportionment, until it had succeeded in obtaining the insurance on its fire policies, which was not before December, 1870. *Insurance Co.* vs. *Transportation Co.*, 12 Wall, 194.

In the suit of these appellants in Connecticut the defendants neither transferred the vessel nor "paid or offered to pay the fund into the District Court of Connecticut." *Norwich Co.* vs. *Wright*, p. 125.

All that it did was to ask for a proportionate reduction of the amount of damages (p. 108) but this was not done until after there had been a defense upon the merits without setting up the statute and a decree in favor of the libellants and report of damages (p. 107)—the date of this being April 23, 1867, (*Record*, *Norwich Co.* vs. *Wright*,) and after the steamer had been repaired

In the suits of the other appellants in New York District an abandonment or transfer was carefully avoided, nor was

any offer made to pay value into Court. The original petition (*Record*, p. 27) only proposed to give a stipulation for the value of the vessel, carefully avoiding any admission of liability to transfer, or pay value of, the vessel. And this was not done until the repairs had been made.

The reason for this is apparent. The appellee was then prosecuting its suit upon the policies of insurance, *Trans. Co.* vs. *Ins. Co.*, 6 Blatch., 241, S. C., 12 Wall, 194, in which its claim was that the damage done to the steamer by the collision was small—not exceeding $15,000—while the damage it had suffered by fire was $69,000, And this the owners of the steamer proved "by uncontradicted evidence."

While this controversy with the insurer was going on the appellee did not mean to do anything which could be possibly construed into an abandonment of any interest it had in the vessel.

And it determined to take the chances of the other alternative, hold on to its vessel and its value and contest the liability with any and all who should make claim for damages.

It is idle for the owner to say now that it did not know how to proceed under the statute until the publication of the rules by this Court. The statute distinctly advised it of one way in which its requirements could be complied with; and the purpose of the statute, in this respect, clearly was to estop anyone from making this plea of ignorance.

That way was by the "transfer" of the owner's interest in the vessel.

But it was just this that this owner had determined not to do. And thereby its election not to avail itself of the privilege of the statute (unless it could do so by avoiding its requirments,) was made. And it was too late for it to change this purpose and elect to make the transfer or its equivalent payment of value, when the insurance money had been pocketed.

Again: the appellee, notwithstanding suit had been brought against it by these appellants for their damage by the collision, proceeded to raise the vessel, (paying the salvage expenses), and to repair and refit her for further service and other voyages.

And this it did without making any transfer or paying value or taking any step in that direction for the benefit of the appellants or any other sufferer by her wrong. And it went to trial and allowed judgment of condemnation to go against it without, in any way, setting up the statute as a defence.

Is this act of repair reasonably reconcilable with an intention to make any such transfer or payment of value? If it is, the transfer intended must have been a transfer of the vessel as repaired. But the reasonable inference is that the owner had made its election not to abandon anything to the creditor, but to hold on to everything that it had, and get everything it could from the insurers, and

take the chances of fighting off the claims that might be brought against either the owner or the vessel.

2. But this doctrine of the maritime law applies with special force, if the liability of the ship is limited to a time immediately after the collision.

In such case the election given to the owner must be referable to the same time.

If the transfer or payment of value which the owner is required to make is the transfer or payment of such interest only as the owner had in the vessel at the point of time immediately after the collision, or as the steamer lay on the bottom of the sound, the appellants were entitled to have him determine his election and make such transfer or payment when the vessel was in that condition, so that they could determine, in view of that fact, their course, and whether a suit with its burdensome expense was expedient. And so that if they had elected to accept such transfer they could have had an appraisement of the property in its *then* actual condition. Is it reasonable that the owner should select his own time for the appraisement (in the present case nine years after the collision), if he is not to be held to that time as the time of which the value is to be appraised?

We submit that if the owner had the right to transfer or pay value when his vessel lay at the bottom of the Sound and he elected not to do so at that time, he is thereafter equitably estopped, as against these creditor appel-

lants, from claiming any such transfer or payment *as of that time*.

And this is the principle of the maritime law. The owner sending his ship upon a new voyage, after demand made upon him, or repairing his ship for any other purpose than to save her for the creditor, forfeits his right to abandon, because he thereby determines the election to which the creditor has a right to hold him.

The collision occurred April 18, 1866. The appellants brought suit against the owners May 9, 1866. The owners made defence upon the merits without setting up the statute, and judgment went against them without any evidence whatever of any intention on their part to avail themselves of the statute in any way. The very first indication of any such intention that can be claimed was a year after the time when, as is now claimed, their right to a limitation became absolute.

With what reason can the owners claim to be put back, as they were, in April, 1866, while these appellant creditors are required to remain as they were in April, 1867?

3. When the present petition was brought, June 13, 1872, the appellee's vessel had been lying under condemnation of the District Court over two years without the transfer of the vessel or its value by the owner, in compliance with the requirements of the statute.

The judicial seizure had been followed by adjudication

and dispossession, and by the maritime law, as we have seen, no right of abandonment could thereafter remain in the owner, as against the creditor.

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1885.

No. 62.

GEORGE PLACE, *ET AL.*, APPELLANTS,

vs.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

BRIEF ON BEHALF OF RESPONDENTS.

J. W. C. LEVERIDGE,
Proctor for Respondents.

JEREMIAH HALSEY,
Advocate.

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STATEMENT.

A concise statement of the history of the litigation growing out of the collision between the steamer "City of Norwich" and the schooner "General S. Van Vliet" may essentially aid the Court in the investigation of the questions arising upon the record in this appeal.

On the morning of the 18th of April, 1866, a collision occurred between these vessels on Long Island Sound.

The steamer was owned by the Transportation Company, and the schooner by William A. Wright, and others. The schooner sunk in consequence of the collision, and with her cargo became a total loss.

Very soon after the collision the steamer took fire; her deck and upper works were burned off, and she sank in about twenty fathoms of water.

The fire was a direct consequence of the collision, and inseparable from it.

It was caused by the rushing of the water through the broken hull of the boat, whereby the fire was driven out of the furnaces upon the wood-work, and the boat sunk by reason of her filling with water.

At the time of the disaster the boat had a cargo of merchandise on board belonging to different owners, all of which was lost.

The freight then pending amounted to $600, but none of it was earned or received by the owners of the steamer.

Sometime after the disaster the steamer was raised by salvors, and taken to the Long Island shore, where she was repaired.

Finding by Strong, J., Record, p. 3.

It was about four months from the commencement of the work before she was raised and taken to Greenpoint.

Testimony of Israel J. Merritt, Record, p. 60.

The steamer was insured against loss or damage by fire, in the sum of $75,000 by ordinary fire policies, but not against marine disaster.

LIBEL OF WRIGHT, *ET AL.*

On the 9th day of May, 1866, William A. Wright, and others, owners of the schooner and her cargo, filed a libel in the District Court of the United States, for the District of Connecticut, against the Transportation Company, *in personam*, to recover damages for said loss.

The answer denied any fault on the part of the steamer, and alleged that the steamer had on board a large and valuable cargo, belonging to various parties, much larger in value than the amount of the interest of the respondents in said steamer and her pending freight, all of which was lost. Upon the merits, the Court held the steamer in fault, and thereupon the respondents filed a claim to the benefit of the act of Congress, of March 3d, 1851, limiting the liability of ship-owners, and offering to the Court proof of the value of the vessel and her freight pending, and that such value was exceeded by the amount of property destroyed by the collision.

The Court held upon this application, that the limitation of liability is not confined to damage done to property on board the faulty vessel, but embraces damages to other vessels and their cargoes, by collision.

That the respondents were entitled to take proceedings to have the amount for which they were liable apportioned among the parties entitled to it, but that the Court had no power to give them such relief in any form of proceeding, and therefore rejected the evidence offered and denied the motion, and entered a decree for the amount of damages reported by the Commissioner. See opinion by Shipman, J.

1 Ben. 156.

The learned Judge said, p. 165: "This Court * * is without rules of practice, and without the power to make such rules, adapted to accomplish the object of the Statute, and give effectual relief to the parties interested in the sum for which these respondents are liable as damages for this collision."

From this decree the respondents appealed to the Circuit Court, where the decree was affirmed, that Court holding that the act of March 3d, 1851, does not limit the liability of the owner of a vessel for loss, damage, or injury resulting through the fault of such vessel, to another vessel and her cargo, from a collision between the two vessels, but holding that if the act did apply the respondents were entitled to its benefits in some form, and intimating the opinion that a Court of Admiralty was a proper tribunal to give the relief provided by the statute.

See opinion by Woodruff, J.

8 Blatch., Cir. Ct. Reports, 14.

That the question in both Courts was passed upon by the Court, and was not disposed of upon any technical point in relation to the mode of proceeding, see same opinion, pages 18 and 19.

The result in both Courts being the same, though upon differing constructions of the act, the respondents appealed to this Court.

The cause was argued at the December Term, 1871, before the full bench, with the exception of Justices Nelson and Strong.

From its first presentation it attracted the interest and closest attention of the Court, from the far-reaching and important nature of the questions involved, and as being a leading case upon the true construction of the act of March 3d, 1851.

This Court, by its unanimous decision held:

1. "The act of Congress of 1851, limiting the liability of ship-owners includes collisions, as well as injuries to cargo; so that if a collision happens between two vessels at sea, and one of them is in fault without the privity or knowledge of her owners, the latter will only be liable for the amount of their interest in the vessel and her freight then pending; and that amount being paid into Court, if insufficient to pay all the damages caused, will be apportioned *pro rata* amongst the owners of the injured vessel and of the cargoes of both vessels in proportion to their respective losses.

2. This liability of the ship-owners may be discharged by their surrendering and assigning to a trustee for the benefit of the parties injured, in pursuance of the 4th section of the act, the vessel and freight, although these may have been diminished in value by the collision, or other casualty, during the voyage; and *it seems*, that if they are totally lost, the owners will be discharged.

3. In this respect the act has adopted the rule of the maritime law, as contradistinguished from that of the English statutes on the same subject.

4. The District Court, sitting as a Court of Admiralty, has jurisdiction of cases arising under the act, and may administer the law as provided in the 4th section.

5. The proper course of proceeding in such case pointed out."

Norwich Company *vs.* Wright.
13 Wallace, 104.

In the course of the opinion, the Court says, p. 126: "The difficulty with the respondents in this case is, that they have not taken the proper steps, in the proper Court, to enable them to avail themselves of the benefit of the act. The want of any uniform practice on the subject may, perhaps, be a sufficient excuse for not having done this. If proceedings are still pending in the Eastern District of New York it is not yet too late to initiate proper proceedings there for making an apportionment in the case."

The decree was allowed to stand for the purpose of showing the respondents' liability to the libellants, and the actual amount of damage which the latter had sustained, as the basis of an apportionment. Further proceedings in the Court below were to be suspended until the respondents had been given reasonable time to take the proper steps in the District Court, where the fund was, for settling and closing up the claims of all parties interested therein.

The necessity for some rules of practice under the act being thus forcibly presented to the attention of this Court, such rules were prepared and announced, and were published in the same volume of reports.

LIBEL OF PLACE, *ET AL.*

On the 24th of August 1866, while the suit in the District Court of the District of Connecticut was pending, and after the steamer had been raised, repaired and brought into the port of New York, George and Charles Place, two of the appellants, filed a libel *in rem* against her in the Eastern District of New York, claiming damages as owners of part of her cargo, which was lost by said collision.

See amended libel of George and Charles Place, record p. 21.

Other libels were also filed at the suit of other owners of cargo. In due course the steamer was seized by the Marshal, and the petitioners having intervened as claimants, in October, 1866, filed their petition in said District Court, setting forth the facts aforesaid, and praying that they be entitled to the benefit of the act of March 3d, 1851, and that said steamer and her freight pending at the time of said collision and fire should be appraised, and that the petitioners should be authorized to enter into a stipulation for such appraised value, such stipulation to be for the benefit of the libellants and all other claimants, who may establish claims, or prove, by actions or otherwise to be legally entitled to compensation for losses by such collision and fire, in proportion to their respective losses, and that upon the execution of such stipulation the said steamer as well as the owners thereof may be discharged from all liability for all losses occasioned by such collision and fire.

Record, p. 27.

The Court held "That the relief sought by the vessel and her owners could not be afforded under any of the provisions of the act of 1851.

"But that the application might be treated as one for the release of the vessel on bail, addressed to the ordinary discretion of the Court.

"That the power to release property from arrest on bail does not depend upon any statute, but is one of the inherent powers of the Court." See opinion by Benedict, J., reported 1 Ben., 89.

In pursuance of said opinion, an order was entered on the 26th day of January, 1867, referring to a Commissioner to ascertain, appraise and report to the Court the *present* value of said steamer, her engine, tackle, etc., and that upon the coming in of said report the said owners and claimants give a stipulation, with sufficient sureties, according to the practice of said Court on the bonding of vessels, in the amount so reported, etc.

Record, p. 29.

The Commissioner reported her present value to be $70,000.

Record, p. 30.

At this time the boat had been rebuilt, and her value was stated in the order of reference to be the same as before the collision.

Record, p. 29.

The stipulation, in conformity with the order and report, was duly executed and filed March 28th, 1867.

Record, p. 30.

On the 9th day of April, 1867, the respondents filed their answer denying liability, and claiming the benefit of the act.

Record, p. 22.

On December 23d, 1869, a decree was entered in favor of the libellants, with reference to a Commissioner to ascertain their damages.

Record, p. 33.

The opinion of the District Court is reported in 3 Ben., 575.

It was held by the District Court that the fire was an incident of the collision, and as between carrier and shipper, if the collision was caused by negligent navigation of the steamer, the carrier was responsible for the damage by fire as well as by collision, and that the act of March 3d, 1851, constituted no defence.

SUITS AGAINST INSURERS.

The steamer was insured, as before stated, against loss and damage by fire, "whether running or not running," in the sum of $75,000, by policies issued by several fire insurance companies; one for $5,000 by the Western Mass. Ins. Co., and one for a like amount by the Howard Ins. Co.

After the steamer had been raised and towed to the port of New York, the insurers were invited to examine the wreck and adjust a loss under their policies. They did so, and denied all liability and refused to pay, on the ground "that the loss was the result of a marine and not of a fire peril," and thereupon suits were commenced

by the owners of the steamer, in the Superior Court of Connecticut, which were removed by the defendants into the Circuit Court for that District.

One of the suits, that against the Western Mass. Ins. Co., came on for trial before Judge Shipman and a jury, and resulted in a verdict for the plaintiff.

The defendants moved for a new trial, which was heard before Nelson and Shipman, J.J., and a new trial was denied.

The Court held:

"That where a steamer, insured against loss by fire, received an injury by collision with another vessel, and in consequence thereof filled with water, whereby the fire was forced out of her furnaces, and burnt off her light upper works and liberated her light freight, thereby reducing her floating capacity so that she sunk in deep water; and the jury found that she would not have sunk but for the fire; held that the fire was to be considered as the proximate cause of the loss occasioned by burning and sinking; and that the insurers were liable for the damages naturally and necessarily resulting from the fire; but not for the damages which were, or might have been caused naturally and necessarily by the collision only."

See the case, and opinion by Shipman, J., reported in

34 Conn., 561.
6 Blatch., C. C., 241.

Another of the cases, that against the Howard Ins. Co., was, by stipulation, tried by the same Judge, a jury being waived.

The finding of facts was the same as in the case tried to the jury; that the steamer would not have sunk but for the fire; that all the damage which she suffered beyond $15,000, including the cost of raising her, was the natural and necessary result of the fire, and of the fire *only*.

Upon this finding judgment was rendered for the plaintiff.

The record in each case was then brought before this Court by writ of error, where both judgments were affirmed, this Court holding that: "Underwriters against fire are responsible for a loss occasioned by the sinking of a vessel insured, when caused by fire (though the fire itself be the result of a collision not insured against) if the effect of the collision without the fire would have been only to cause the vessel to settle to her upper deck, and that be a case in which she might have been saved."

Insurance Company v. Transportation Company, 12 Wall., 194.

In consequence of these decisions, the plaintiff recovered of the insurance companies $49,283.07.

Record, p. 5.

PETITION FOR LIMITATION OF LIABILITY.

Guided by the rules of practice, and the decision and direction of this Court in the case of Wright, *et al.*, the respondents in June, 1872, filed a petition in the District Court for the Eastern District of New York, praying that, in conformity with the act of Congress,

said decision of this Court, and the admiralty rules made in pursuance thereof, the Court would cause an appraisal to be made of the value of the interest of the petitioners in said steamer and her freight for the voyage in which she was employed, for which they were liable, and that an order should be made for paying the amount of such valuation into Court, or for giving a stipulation therefor.

Also, praying for a monition against all persons claiming damages arising out of said collision and fire, and praying for relief.

See petition, record, p. 34.

On the 19th of July, 1872, an order to show cause was entered, returnable on the 3d Wednesday of November, 1872.

Record, p. 50.

The parties appeared and were heard, and on the 5th day of March, 1873, an order was entered that an appraisement should be made as prayed in said petition, by a Commissioner, and that the further prosecution of all suits against the petitioners as owners of said steamboat, in respect to any such claim for damages by the collision, fire and loss in the petition mentioned, and all further proceedings, except as to said appraisement should be stayed until further order of the Court.

Record, p. 52.

See the opinion by Benedict, J., on this petition and order

6 Ben., 330.

January 6th, 1875, the Commissioner returned his report, fixing the value of the steamer after the collision and before she was raised, at $2,500.

Record, p. 57.

Exceptions to the report were filed by Place, *et al.*, and by Wright and others, for various reasons.

Record, pp. 72, 73.

March 29th, 1876, an order was entered confirming the report of the Commissioner, and ordering the petitioner to pay into the registry of the Court said sum of $2,500, and that a monition issue citing all persons to appear who had not proved their claims.

Record, p. 74.

April 5th, 1877, an order was entered referring to a Commissioner the proof of claims by the respective parties who had appeared.

Record, p. 78.

The report of the Commissioner was filed February 13th, 1878.

Record, p. 81.

And confirmed September 27th, 1878.

Record, p. 85.

The final decree was entered January 4th, 1879.

Record, p. 85.

The opinion of the District Court, overruling the exceptions and granting the decree, by Benedict, J., is reported.

8 Ben., 312.

From this decree an appeal was taken by Place, *et al.*, and Wright, *et al.*, to the Circuit Court.

The cause came on to be heard before Mr. Justice Strong, holding the Court, on the 24th day of June, 1879.

His findings of fact, conclusions of law, and opinion are printed in the record, pp. 3—14.

And the case may be found reported in 17 Blatch., C. C., 221.

On the 29th day of June, 1879, an order was entered by Wallace J., affirming the decree of the District Court.

The bill of exceptions is found on page 1 of the record, and the appeal to this Court on page 102.

MAIN QUESTION.

The main question which is sought to be raised by the appeal is, as to the amount at which the limit of the liability of the petitioner is to be fixed.

The appellants allege in their appeal "that the petitioners are not entitled, as against these appellants to any such decree."

If by this they intend to raise the question that the petitioner is not entitled to the limitation provided by the Statute, on account of laches, or delay in taking "appropriate proceedings," we say that this Court determined that question in the case of Wright, 13 Wall., 104.

This Court then held, p. 126, that if proceedings were still pending in the Eastern District of New York, it was not yet too late to initiate proceedings there for making an apportionment in the case, and allowed a reasonable time for that purpose. This determined that from the embarrassments under which counsel had labored from the want of any rules of practice, and of any construction of the Act by this Court, the petitioner was not precluded from its rights by laches, and was still entitled to the benefit of the Act, and proceeded to determine the measure of liability.

The petition in this case was filed in pursuance of this opinion and in conformity to the rules of practice. The same ruling was made in "The Benefactor," 103 U. S., 239.

In relation to the amount of such liability the appellants made several claims:

1. That the value of the steamer should not have been found at any time subsequent to the collision, but at a time just prior thereto.

2. That the petitioners were not entitled to a reappraisal of the steamer, and that her value should not have been found at a sum less than $70,000.

3. That the amount collected of the insurers should have been included in the estimate of the value of the interest of the owners in said steamer for the voyage.

4. That no deduction should have been made of the expenses of raising the steamer.

FIRST.

The first claim does not require comment, being contrary to the settled construction of the Act by this Court.

SECOND.

The second claim assumes that the stipulation for $70,000, the appraised value of the steamer after she had been raised and rebuilt taken in an ordinary suit *in rem* for the benefit of all libellants, and to discharge the vessel from arrest for damages caused by the same disaster, constitutes the measure of the petitioner's liability under the Act.

But that stipulation was not taken in a proceeding to limit the petitioners' liability. It was taken by virtue of the general powers of the Court, in the suit brought by Place against the steamer. It is true a petition was filed in that suit by the present petitioners, praying that there might be a limitation of their liability, and that a proper bond for such a limitation might be taken. But their prayer was denied by the Court, and having denied the petitioners any benefit under the Act, proceeded to take a stipulation for the value of the vessel as she then was under the general Admiralty powers of the Court.

Now if it be conceded that that stipulation became a substitute for the steamer as she then was, it would not follow that the amount of that stipulation became the amount of the fund in this proceeding. If the steamer herself, as she then was, had remained in the custody of the Court until the filing of the present petition, her value would not have been the fund to be distributed in this proceeding.

The liability would not in that case have been limited to the value of the steamer *after she had been raised and repaired*, which was the value for which the stipulation was taken.

There are now, as there would have been if the steamer had been in the custody of the Court when this petition was filed, only two questions to be considered.

1. Are the petitioners entitled to the limitation which the statute gives? And

2. What is the amount at which the statute fixes such limitation?

I.

That they are entitled to such limitation was settled by this Court in the case of Wright, *supra;* and this proceeding was by that decision expressly authorized, and has been taken in strict conformity with it and the rules there established.

II.

Now the proceeding whenever taken, is a proceeding to obtain the benefit of the statute. The Court must give the petitioner the limitation which the statutes gives, or it can give nothing.

The decision of this Court expressly determined what thta statutory limitation is. It held that "the rule of the Maritime Law was intended to be adopted," and that by that rule the owner's liability was limited to the value of his interest in the vessel and her freight, viz: to that value which the owner would have been compelled under the general Maritime Law to surrender in order to be discharged from liability.

This amount has been fixed, and accurately fixed by the report of the Commissioner in this proceeding.

The valuation of the steamer, at the time the stipulation was taken in the Place suit, and after she had been raised and repaired, in no way effects that amount. That amount is always the same whether the vessel was repaired or not; and that is the amount at which the statute fixes the liability of the owners if they are entitled to any limitation of such liability. And the stipulation for value has no force in fixing that amount.

The answer to this claim, given by Mr. Justice Strong, seems to be conclusive. He says,(17 Blatch., C. C., R., page 229): "To hold that the owners are liable to the extent of that valuation would be substantially to require them to surrender not only the ship and her freight, but also a sum of money equal to all they expended on her in raising and repairs. Such, I think, would be a departure from the obvious meaning of the statute, and not required by the maritime law * * * The extent of the limitation is not a shifting one varying with the times when the protection of the Act may be sought, any more than it can be enlarged or diminished by the choice of the mode of obtaining that protection."

In the case of "The Benefactor," 103 U. S. 239, this is sanctioned by the opinion of this Court. The suit arose out of a collision between that steamer and the schooner "Susan Wright," by which the latter was sunk, and with her cargo became a total loss, the steamer not sustaining injury. Separate libels were filed on behalf of owners of the schooner and of her cargo, and by the crew; upon which the steamer was attached and duly appraised, and her value fixed at $40,000.

The owners of the steamer were allowed to enter into a stipulation for such value for the benefit of the libellants if they should establish the liability of the steamer, and of all persons and parties who might by due proceedings in the Court show themselves entitled to liens upon her by reason of such collision, and that upon giving such stipulation the steamer should be discharged from all liability. The stipulation was filed, and the steamer was discharged. On the hearing, the steamer was adjudged in fault, and the damages of the libellants were assessed at $61,810.49.

A decree was entered in favor of the libellants for the several amounts found due them, and directing the stipulators to perform their obligation. After an appeal had been taken to the Circuit Court, the claimants filed their petition in the District Court under the fifty-fourth Rule in Admiralty, claiming the benefit of the limitation of liability provided by section 4,283 of the Revised Statutes, and offered to enter into a stipulation for the value of the steamer, and of he rfreight for the voyage, amounting to $1,220.32.

This petition was dismissed by the District Court, and also by the Circuit Court, upon appeal to that Court, upon the ground that the petition came too late, inasmuch as it was not filed until after a trial of the cause of collision upon the merits, and a final decree thereon.

The decision was reversed upon appeal to this Court, and the petitioners were held not barred from taking the proceedings.

This Court says, page 246:

"A question has been raised by the counsel for the appellees, whether the appraisement of the value of the steamship made at the time she was libelled, is sufficient for the purposes of the proceeding to obtain limitation of liability." After stating the English law, the Court adds: "Our law following the admiralty rule, limits the liability to the value of the ship and freight after the injury has occurred; so that if the ship is destroyed the liability is gone; and whether damaged, or not damaged, the owners may surrender her in discharge of their liability.

"What would be the rule if, after the collision has occured, the offending vessel should meet with other disasters greatly imparing her value, is a question which may require further consideration when the case arises.

"Nothing of the kind is alleged in the present case.

"It seems to us therefore, that the District Court, unless it has some cause to believe that the former valuation was unfairly made, may adopt that valuation in the proceedings for a limitation of liability."

That valuation, with the freight added would in that case be the exact measure of the owner's liability, as there was no suggestion of any increase or diminution in the value of the steamer between the time of the collision and the time of the appraisal, provided the former valuation had been fairly made, thus leaving it open for a reappraisal if the Court had any doubt in relation to the correctness of the first valuation. The important indication is, that this Court did not regard the stipulation for value in an ordinary admiralty suit, for a release of the vessel, a necessary determination of the amount of the owner's liability in a proceeding for a limitation of liability.

It is a valuation for a different purpose, having no reference to the value of the vessel at any period prior to the time of the valuation.

In that case such valuation exactly coincided with the owners' liability, under the act for limitation of liability, if the Court was satisfied it had been fairly made; but the Court was not bound by such valuation, as the measure of the petitioners' liability, which is the appellants' contention here.

1. Again, care should be taken to discriminate between the Rule of Limitation of Liability and the Proceedings to be taken to obtain such limitation.

The rule of limitation, under the Maritime Law, is that the liability is limited to the ship and the freight, *i. e.* to the property which

the ship-owner put at risk for the expedition in question—to his sea fortune (*fortune de mer*), and not his property on land.

Under the English statute the rule of limitation was that the liability should be limited to an amount equal to the value of the ship just before the loss in question, which might or might not include part of the land fortune of the ship-owner. That rule was afterwards changed, and is now fixed at £15 per ton, as to liabilities for loss of life or injury to passengers, and £8 per ton as to damages to property, a purely arbitrary sum, which may or may not include a part of the land fortune of the ship-owner.

The proceeding, under the Maritime Law, to obtain the benefit of this limitation is simple. It is a surrender of the ship and freight, which may be made at almost any time and in almost in any way.

It may be made by commercial correspondence, or by notarial act, or before the Clerk of the Tribunal of Commerce, or by a declaration in the owner's pleading in the suit brought against him.

Caumont, Dict. de Commerce Maritime, Verb. "abandon," § 88.
Bedarride, Comm. de Code de Commerce, Vol. 1, § 297.

The proceeding under the English statute, was, and is a suit by the ship-owner before the Court of Chancery in England or Ireland, or before the Court of Session in Scotland, and now before the High Court of Admiralty, whenever a ship or its proceeds are under its arrest.

Now our Statute also contains both a Rule of Limitation and Proceedings to obtain the benefit of it. The rule of limitation which it awarded is, as was decided by the Supreme Court, the rule of the maritime law.

The proceedings which it provided are two: (1) Appropriate proceedings before a competent Court; (2) a transfer to a trustee by the ship-owner or ship-owners "of his or their interest in such vessel and freight."

And furthermore the defence of limited liability may be availed of by answer or plea, at least so far as to obtain protection against the libellants in a suit in admiralty, to recover for the damages caused by the collision; and where there is a total loss of ship and freight, the statute may be invoked as a full defence.

The Scotland, 105 U. S., 24.
Thommesen *vs.* Whitwill, 21 Blatch., C. C., 45.

2. Now whatever be the proceeding, it is clear that the Rule of Limitation must be the same.

A question may arise in any case whether the ship-owner has taken such proceedings as the statute prescribes for obtaining the benefit of the rule. But it must be the same rule of which he obtains the benefit in any case. It is not one rule of limitation of which he is enabled to obtain the benefit in one case, and another rule whose benefit he obtains in another. The rule is the same in all cases, and that rule of limitation is the rule of the maritime law.

It is that rule of limitation which the Supreme Court has expressly held to have been incorporated into the act of 1851.

"The liability of the owners is discharged either by transferring the vessel and freight, or by paying their equivalent, that is the

value of what they might have transferred in discharge, according to the apportionment of the Court. The owners have their option of these two modes. They may give up the vessel and freight, or they may pay their value. But the measure or limit of liability in each case is the same. Very plainly, it is not intended that the creditors shall obtain more when one mode of proceeding is adopted than when the other is followed."

"But as I have said, all that the owners are required to transfer is the ship in her damaged condition, as she was immediately after the injury was inflicted. *Equivalent to that is her value at that time.*"

Strong, Justice, 21 Blatch., C. C., 231.

3. If it should be claimed that a transfer of the steamer at the time the petition was filed would have given the appellants the benefit of her increased value, we suggest that this petition was filed in June, 1872. Her value at that time may have been greatly impaired. The stipulation for value was given in March, 1867, for $70,000, her then value. Neither valuation would be the measure of the owner's liability under the Act. The fact that we did not surrender does not change in any respect our measure of liability.

This Court said in "The Scotland," 105 U. S. 34: "But it is objected that they did not follow the statute by giving up and conveying to a trustee the stripping of the wreck and the pending freight. It is sufficient to say that the law does not require this. It contains two distinct and independent provisions on the subject. One is, that the ship owners shall be liable only to the value of the ship and freight; the other is, that they be discharged altogether by surrendering the ship and freight. If they failed to avail themselves of the latter, they still are entitled to the benefit of the former kind of relief * * * This last proceeding the respondents did not see fit to adopt, but that does not deprive them of the preceding section."

4. This Court, then, having allowed the petitioners to take these proceedings as the "appropriate" ones, must surely have allowed them to take them now, as of the time of the disaster. It was conceded on the argument that, if at the time of the disaster the petitioners had made the transfer of the vessel and her freight to a trustee, that would have been a proper proceeding to obtain the benefit of the rule of limitation, and they would have been entitled to the decree which they have now obtained.

It must follow that if the petitioners now have taken measures to put into the Court, the same sum which, on such transfer, would have been put into the hands of such trustee, the parties concerned have been placed upon the same footing as they would have been in that case.

The Court would not say that because the petitioners were no longer in a position to transfer the wrecked vessel and freight to a trustee and thus relieve themselves from liability, they were not to be allowed to relieve themselves *at all.* It must follow that if the petitioners now place the parties interested upon the same footing as they would have been, had such transfer been made at the time of the disaster, the petitioners must be entitled to the same decree.

5. The claim that the appraisement should have been made of the value of the steamer in the interval between the collision and the fire, if pressed here is untenable.

The fire was a direct consequence of the collision and inseparable from it.

Record, p. 3.

See opinon of Mr. Justice Strong.

17 Blatch., C. C., 232.

Also, of Benedict, J. 8 Ben., 317.

It is not possible therefore to separate, so far as this case is concerned, the collision from the fire, though they may have been so separated in the action against the Insurance Company, where the insurance was against damage by fire, and fire caused by collision was not excepted, in the way of discriminating damages resulting from one of two concurrent causes of loss.

12 Wall., 201.

The collision and the fire formed one disaster. The owners could not have transferred the steamer to a trustee after the collision and before the fire. A transfer to a trustee after the fire would have been all that was requisite, and the amount to be paid into Court "must be the equivalent of that which would pass to the trustee."

So that, even if the disaster could be separated into two, still, by the maritime law the thing to be surrendered would have been only the wreck of the vessel as she lay at the bottom of the Sound, and by our law that wreck would be the thing to transfer to the trustees.

It follows therefore, that in either case the value of that wreck is the amount to be put into the Registry of the Court.

6. It is claimed by the counsel that the Supreme Court must have meant that the amount of the stipulation is to be divided, because the stipulation was *the fund* in the District Court, and there is no power to *create* a *res* for the purpose of giving the Court jurisdiction.

But we submit that that is just the power which is given by the rules adopted by the Supreme Court. Those rules provide that the owner may commence his proceedings in limitation of liability "in the District Court for any district in which the owner may be sued." (Rule 57.)

Such suit against the owner need not be in a District Court. It would be a small protection to the owner if he could not be protected against suits brought against him in the State Courts.

But in whatever District he is sued, whether in a State Court or a Court of the United States; whether in the District where he resides by personal service of process, or in another State by process of attachment against his property, he may go to the District Court of that District and file there his petition, and by giving stipulation or paying into that Court, the value fixed by that Court, he may give that Court jurisdiction against all parties who, by reason of the Statute, have any interest in that fund.

Indeed, it is entirely plain that in every case, except where the owner's vessel is already libelled in the Admiralty, the first step to be taken by the owner under the rules, if he would obtain a limitation of his liability, is to create a fund in the proper District Court, and where his vessel is already libelled, still he may, in the proceedings which he institutes, create a fund and have his vessel relieved from the libel.

There is, therefore, nothing whatever in the argument that the stipulation must be the fund, because there is no power to create any other. Such power is the very power conferred by the rules. The creation of such a fund for the purpose of giving the necessary jurisdiction was the very purpose of the rules.

7. It is insisted that the "giving of that stipulation operated as an admission by the owners that there was to be, or at least was likely to be, an apportioning under the act of 1851, and that *for the purpose of such apportionment*, the full value of the vessel was to be held as expressed in the stipulation," and that the petitioners "are now estopped to deny this."

This is a most extraordinary statement. The owners had asked the Court to limit their liability and make a stipulation for that purpose. The Court replied that it had *no power to do so.*

Thereupon the owners gave a stipulation under the general powers of the Court for her then value, and the counsel now argues that they gave it for the very purpose for which the Court had held that it lacked the power to take a bond.

How the owners should be estopped from saying that they gave the stipulation for the purpose for which the Court directed them to give it, and not for the purpose for which the Court had held it had no power, is still more difficult to understand.

8. But if the stipulation for value in the Place suit constituted the fund already in Court, whose presence there was essential to the taking of any proceedings by these petitioners to limit their liability, what was the necessity for the Supreme Court's deciding or considering any question as to the amount of the fund?

That the Supreme Court, having the proceedings before them in which that stipulation was taken and, as was urged by the counsel for the appellants, having the stipulation before them, (though whether they had the stipulation before them makes no difference, so far as we can see), deemed it necessary to decide at the outset what rule was to be followed in order to arrive at the amount of the fund to be apportioned, is conclusive upon the question whether that stipulation constituted the fund. The rule, which that Court has laid down as the limit of the liability of the owner, is to be followed in arriving at the amount of the fund to be apportioned; and by no process of reasoning can the amount of that stipulation for value be brought within that rule.

THIRD.

The question raised by the claim of the appellants that the amount collected of the insurers should have been included in the appraisement has not been expressly determined by this Court.

Expressions used in opinions pronounced by this Court, would indicate that insurance recovered formed no part of the amount for which ship-owners are liable under the Act, as in "The Benefactor," p. 246, where it is said: "Whereas our law, following the admiralty rule, limits the liability to the value of the ship and freight after the injury has occurred: so that if the ship is destroyed the liability is gone, and whether damaged or not damaged, the owners may surrender her in discharge of their liability."

So in "The North Star," 106 U. S., page 29, "for the 'Ella Worley' by her loss discharged her portion of the common burden, and so much more as the amount that would thus be decreed in her favor.

Her delivery to the owners was tantamount to her surrender into Court in case she had survived. It extinguished the personal liability of he rowners by the operation of the maritime rule itself."

So in Norwich Company v. Wright, 13 Wall., page 126, "But it will be observed that the Act of Congress contains a provision for the ship owner to discharge himself, as in the maritime law by giving up the vessel and her freight."

Also, that the rule of the Maritime Law limited the owner's liability to the vessel and her freight.

Also, in "The Scotland," page 28, "In the case of Norwich Company v. Wright, (13 Wall., 104) we had occasion to state that the general maritime law of Europe only charges innocent owners to the extent of their interest in the ship for the acts of the master and crew, and that if the ship is lost their liability is at an end."

Also, in Moore v. Am. Transp. Co., 24 How., page 39, Nelson, Justice, in giving the opinion of the Court says: "The act not only exempts the owner from the casualty of fire, but limits his liability * * * to an amount not exceeding the value of the vessel and freight."

This question has been before the District and Circuit Courts in different Circuits and Districts, and has been discussed with great learning and ability by counsel and by Court, and the decisions have been uniform against the claim of the appellants.

The first case in which the question arose was that of Wattson v. Marks, 2 Am. Law Reg., 157, in the Eastern District of Penn., before Judge Kane. The steamer had been stranded and totally lost. The libel was on a contract of affreightment. The steamer was insured.

The learned Judge says, page 167: "Recognizing then, the liability of the owners upon a contract of carriage like this, I am of opinion also, that such liability is at an end, upon the total destruction of the vessel and loss of freight, before the completion of the voyage. Nor is there anything, as it strikes me, in the circumstance that the vessel was insured, and that a loss has been paid on her, or is still payable. The limit of the liability, the subject matter of the surrender in discharge of it, was the 'value and amount of the owners' interest.'

"If the vessel had ceased to exist, if the wreck was complete, and there is no longer property in her, or in her remains for any one—ithe owners' interest is gone. He has nothing to surrender. There is not a word in the Act about the insurance moneys, which he has received, or might claim. *These are not his interest in the vessel.*"

"The policy of insurance is a distinct and independent subject of property. No equity attaches upon the proceeds of it in favor of third persons, unless there is some contract or agreement, or trust, to that effect.—Ellis on Ins., 81. The assignment of a ship passes no interest in an outstanding policy.

"The fire insurance policy on a house is a merely personal contract and it passes even in equity to the executor, not the heir.—Mildmay *vs.* Holyham, 3 Ves., 472.

"A mortgagee has no claim upon its proceeds.—Vernon *vs.* Smith, 5 B. & A. 1. And as the marine policy is a mere personal contract between the insurer and assured, so the rights of action which flow from it in case of loss, are strictly personal also. *It is not, it never was an interest in the thing insured.* In a case of total loss the rights of the assured to recover by force of it, spring up and have their being only from the moment when his interest in the thing expired."

And on page 171 : " I can not hold, therefore, the amount, whatever it might be, that has been paid, or that may be payable by the insurers, as a part of the defendant's interest in the ship and her freight. The result is, that there can be no recovery against the owners as such."

The date of this decision is not given in the report, but the case shows that the shipment was June 30th, 1851, the steamer was lost July 5th, 1851, and the decision was published in January, 1854. This question was, therefore, decided adversely to the appellants in the first case that arose under the Act of March 3d, 1851.

The masterly grasp of the statute by the learned Judge, has left little to be added by others, and in its main features has been sustained by the decisions of this Court, and was referred to, with approval, in Wright's case, 13 Wall., 127.

The question next arose in June, 1872, when the petition in this case was filed in the District Court for the Eastern District of New York, in pursuance of the decision of this Court, in Wright's case, and of the Admiralty Rules then established.

Upon the proceedings for an appraisement of the value of the steamer and of her freight, the appellants offered evidence to prove the amount which the petitioners had collected from insurers by force of contracts of fire insurance, as stated in the record. The Commissioner rejected such amount in his valuation, as not being included in the amount of the owners' liability, as determined by this Court in the Wright case.

Upon exceptions to the report, the question was fully argued, and the Court held: "That neither the expense of raising her, nor of the repairs subsequently put upon her, nor the insurance money received by her owners, under policies of insurance against fire, was to be added to such value so ascertained."

After stating that he did not consider the question settled by the order of reference, nor by the decision of this Court, because the question under consideration did not present itself to be decided, the learned Judge said, 8 Ben., page 317 : " *Indeed, the language of the statute seems to render it impossible to raise such a question.* Plainly, the words of the Act do not cover the insurance money, and the absence of any allusion to insurance is significant. *It is difficult to believe that such money would not have been distinctly mentioned, if there had been any intention to include it.*"

And on page 318 : "In the second place the amount received for the insurance did not arise from or out of the vessel, but out of certain contracts of indemnity made by the owners of the vessel, to which contracts the freighters were not parties. These contracts were not, and without the consent of the assurers, could not be transferred to the freighters, nor does the Statute make any provision for such a transfer." * * * In respect to the question under consideration, I see no difference in principle, between a proceeding under our Statute and one under the general Maritime Law. Certainly, the words of the Statute make no difference in favor of the freighters. The exercising the right of abandonment, under the Maritime Law, has often brought up for consideration the question, whether the owner must surrender insurance money, in order to limit his liability by abandonment; and it appears to be settled law that, in such case, a surrender of the insurance is not required;" and the learned Judge then proceeds to cite authorities.

Upon appeal to the Circuit Court the whole question was again elaborately argued before Mr. Justice Strong, holding the Court for the purpose of hearing this case.

In his opinion he says, 17 Blatch., 233, "I come then to the more important question, whether the proceeds of the fire insurance should have been added to the appraised value of the steamboat. At the time of the collision her owners had policies insuring her against fire, upon which they recovered the sum of $49,283.07; and it is strenuously insisted, that the sum thus received should be added to the value of the boat, and brought into the apportionment. This presents again the question—what is the limit of the liability of ship-owners, defined by the Maritime Law, and adopted by the Act of Congress? As I have said, the sum to be paid into Court for apportionment is the equivalent of what would pass to a trustee by a transfer under the Statute.

"In substance then, the question is this, according to the rule of the Maritime Law, or the Act of Congress (which is the same) does the limit of the owners' liability extend beyond the vessel and her freight, to the insurance which may be upon her at the time of the disaster? The language of the Statute is, "it shall be deemed a sufficient compliance with the requirements of this Act, on the part of such owner or owners if he or they shall transfer his or their interest in such vessel and freight for the benefit of such claimants, to a trustee to be appointed by any Court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto, from and after which transfer, all claims and proceedings against the owner or owners shall cease." The subject to be surrendered is the interest of the owners in the vessel and freight. Not a word is said of transfer of insurance. A transfer of property insured is not *ex proprio vigore*, a transfer of policies of insurance thereon. Generally, indeed, it avoids the policies. It seems to have been held in Lynch vs. Dalzell, 4 Bro., P. R., 432, that insurances against fire do not attach on the realty, or in any manner go with the same, as incident thereto, by any conveyance or assignment, but they are only special agreements with the persons insuring against such loss or damages as they shall sustain. *There is nothing in the Act of Congress to indicate that the transfer of the interest of the owners to a trustee was intended to have any different effect from that of an ordinary transfer of personal property, which neither in law nor in equity carries with it insurance, or any collateral contract.* It seems to me therefore, that were I to hold that the owners' are responsible, not only to the extent of the value of the vessel and her freight, but also for the insurance collected, I should in effect *interpolate* in the Statute words which Congress refrained from using, and extend the liability beyond the limits prescribed.

"I do not feel the force of the suggestion that because the Statute declares that the liability of the owner "shall in no case exceed the amount or value of the interest of such owner in such vessel" and her freight then pending, instead of declaring that it shall not exceed the value of the vessel and freight, something beyond the value of the vessel and freight, such as insurance, may have been intended; first because a policy of insurance is no interest in the thing assured, and secondly, because the words of the Statute are plainly not to enlarge liability, but have for their purpose, making provision for part owners of offending vessels.

"Instead of holding a part owner liable to the extent of the whole value of the vessel, they limit his liability to the value of his *interest or share* leaving the other owners liable to the extent of the value of their shares. I can not doubt such is the meaning of the Statute."

After stating that there is nothing in the Act which extends the liability of the owners beyond that existing under the general maritime rule, and that by that rule the liability does not extend to the surrender of insurance, the learned Justice proceeds to review the Continental authorities.

The next case in which the question was decided was "The Phestigo" 2 Flip, C. C., 466.

The libel was *in personam* by the owners of the schooner "St Andrew," against the owners of the schooner "Phestigo" to recover for damages occasioned by a collision between those vessels.

The "Phestigo" was sunk and became a total loss, with her cargo. She was insured and in the suit the insurance money was attached by garnishee process. The decision was that they had no lien or claim upon the insurance.

Brown, J., after citing numerous Continental authorities,says: "These authorities seem to me to establish a sound principle of law, and to be justified by unanswerable reasons. The liability of the owners is limited to the value of the ship and freight. That liability ought not to be extended by a contract of indemnity made by a man with a third party; in other words, the right of the injured party to reimbursement ought not to be dependent upon the contingency of a contract to which he was not a party, and with which he has no concern. He loses nothing which he would not have lost if the contract had not existed. The contract of insurance is personal in its nature, and is a mere special agreement with a party seeking to secure himself against apprehended loss on account of his interest in a particular subject matter and not at all incidental to, or transferable with the subject matter."

The shipper has no lien upon it for the non-delivery of his cargo.

Clark vs. Bennett, 7 La., Ann, 342.

Nor can even the master or crew have recourse to it in case of the loss of the vessel.

Eymar vs. Lawrence, 8 La., Ann., 42.

The next case in which the question was determined was Thommesen vs. Whitwill, 21 Blatch., C. C., 45.

Blatchford, Justice, page 65, in relation to this question says: "I think it is sufficient to rest the question on the plain language of the Statute. The "interest" in the vessel which is the measure of the liability under Sect. 4,283, and a transfer of which, if made under Sect. 4,285, operates to discharge the claim for loss or damage does not extend to what is not an interest in the vessel. It was easy for the Statute to have provided for liability for, and transfer of claims for insurance. It fails to do so whether the Maritime Law did so or not."

The latest case reported, to our knowledge, is "The City of Columbus," 22 Fed. Rep., 460.

"The City of Columbus" was wrecked by stranding and sinking January 18th, 1884.

The petition for limitation of liability was filed February 18th, 1884. The claimants filed motions that all insurance money paid on account of the loss of the steamship should be paid into Court, and appropriated in payment of claims of loss, "as part of the interest of the owner in said steamship."

Nelson, J., page 461, said: "Insurance affected by the owners on the steamship and her freight is not an 'interest in such vessel and freight'

which they are bound to surrender for the benefit of the claimants, within the meaning of Rev. Stat., Sec. 4,285."

The decisions in the District and Circuit Courts have thus been uniform, and their soundness is now presented to this Court for final determination.

It is respectfully submitted, that the interest in the vessel, which is the measure of liability under Sec. 4,283, and a transfer of which, if made under Sect. 4,285, operates to discharge the claim for loss or damage, does not include a claim for insurance money received by the owners of the vessel.

I.

The proper construction of the Statute leads to this result.

1. "The amount or value of the interest of such owner in such vessel and her freight then pending" which is made the measure of his liability, means simply the value of his *interest or share.*

See opinion of Strong, J., *supra.*

Ships, except when owned by corporations, are usually owned by several persons in shares, as an eighth or sixteenth.

It is plain that these words in the Statute are not words of enlargement of liability, but of limitation of it, put in to provide for the case of a part owner who might have an interest in the vessel, which should be less than the whole vessel. If the Statute had said that the liability of the owner or owners should not exceed the value of the vessel, it would have been open to argue that *each* owner was liable for the whole amount of such value. To guard against this, the language was used in the Act, "value of the interest of such owner or owners respectively," and it was provided that such owner or owners might transfer "his or their interest in such vessel and freight." This language was necessary. Without it a part owner could never free himself from liability.

It would be contrary to all rules of construction to give to words, so plainly used for this purpose, and so necessary therefor, the opposite use of enlarging the limit of liability for every owner or part owner.

The use of the word "respectively" has great significance in this connection. It is a word of *separation* and *division.* Sec. 4,283, of the Rev. Stat. accomplishes the same result without the use of the word, but as originally passed this word was properly used to separate and divide the owners where there were several, and that the liability was several, each for his own interest or share of the vessel and freight.

The word "interest" extends to the freight as well as the ship. If both were totally lost to their owners "by a surrender to the waves," could it be contended, in the light of the reported expressions of this Court in relation to freight, that insurance on freight was to be surrendered?

2. The construction of Sec. 4,283, is aided by the language of Sec. 4,284, being Sec. 4 of the original Act, which describes the liability as "*the whole value of the vessel, and her freight for the voyage.*"

It is now settled by the decisions of this Court that all claims for damages arising from the disaster stand upon an equality, when the whole value is insufficient to make full compensation and that the measure of the owner's liability is the same whether he surrenders his interest under Sec. 4,283, or takes "appropriate proceedings" under Sec. 4,284.

The "whole value of the vessel and freight for the voyage" is then clearly the limit of the liability, and in case of part owners, each is liable only for the value of his interest, or share in the ship.

This construction gives full effect to the language of each Section, and renders them harmonious.

"The most natural and genuine way of construing a Statute is to construe one part by another part of the same Statute, for this best expresseth the meaning of the makers, and such construction is *ex visceribus actis.*"

Bac. Abr. Statute I., 2.

3. It has been contended that the use of the word "interest" was intended to include something more than the value of the ship and freight, such as insurance, if the ship happened to be insured, and that the Act may be construed as though it read "the value of his interest *to him*," and that if the ship was insured, even though she became a total loss, without fault of her owners, they had an interest in her to be valued by the amount of insurance recovered.

In answer to this claim we reply that we fail to see how it can be held that a policy of insurance on a vessel or a right of action under it, or the premium paid for it, is an interest in the vessel. No case has been cited in which such a doctrine is declared; and as will be seen by the discussions of this question in the French authorities, a prominent reason, which is advanced for not including the insurance in the surrender, is that the "ship is not represented by the insurance," which is a right existing by itself, and is the representative of the premium, which the ship-owner is certainly not bound to surrender: and that, as there is no lien on the insurance for claims which are liens on the ship and freight, the reason for surrendering the ship and freight does not extend to the insurance.

"The words of a Statute if of common use, are to be taken in their natural, plain, obvious and ordinary signification and import."

1 Kent, Com., 462.

"Interest" as applied to a thing, means the right of property which a man has in it.

1 Bouv. Law Dict., 733.

The value of a man's interest in any property is measured by the extent of his right or title in it.

A contract of insurance, by which the owner is entitled to indemnity for any injury to his interest by the peril insured against, would never be thought of as an addition to the value of his interest. Such a construction would be too metaphysical in giving a reasonable and practical construction to a Statute.

Numerous authorities have been cited by Court and counsel in the discussions and opinions in the various cases above cited.

In addition to these cases we refer to the case of McDonald vs. Black's Admr. 20 Ohio, 185.

The plaintiff in error, the defendants intestate, and one Diller were the owners in equal proportions of the steamboat "Columbiana" and Diller was in command of the boat as captain and running her upon the Missouri River. He effected an insurance on the boat for $2,100. The policy stated the insurance to be made on account of D. McD. & B. and that the company did cause "whom it may concern to be insured, lost or not lost," for the period stated.

Black had previously given a mortgage upon one-sixth of the boat to D. & D. McDonald, the plaintiff in error and his brother, to secure the payment of a note.

The boat was lost, and the company paid the loss. The question was whether the McDonalds were entitled to Black's third of the insurance money by reason of their mortgage lien upon the boat.

The Court said: "The mortgage attached as a lien upon the boat: the mortgagor afterwards effected an insurance upon it, and if the policy attached as an incident to the thing mortgaged and insured, it would seem to follow that without any special provision in the policy the mortgagee would be entitled, upon the loss of the principal thing, to follow all the incidents that had attached to it, and subject them for his indemnity. But it is well settled that this is not the nature or character of a contract of insurance. It is a mere personal indemnity against loss to the person with whom it is made, or those falling within the scope of its provisions. As soon as the interest of such person ceases in the property, the contract is at an end, from the impossibility of any loss happening to him afterwards. It is not assignable without the assent of the insurer, and inasmuch as it does not attach to the property, it does not pass to the purchaser upon a sale of it. This doctrine is clearly sustained in Wilson v. Hill, 3 Met., 68. Shaw, C. J., says: 'An insurance of buildings against loss by fire, although in popular language it may be called an insurance of the estate, is in effect, only a contract of indemnity with an owner, or other person having an interest in the preservation of the buildings, as mortgagee, tenant, or other, to indemnify him against any loss which he may sustain in case they are destroyed or damaged by fire. If, therefore, the insured has wholly parted with his interest before they are burned, the underwriter incurs no obligation to pay any body.'

"Again, in Powles v. Innes, 11 M. & W., 13, Lord Abinger, C. B. says: 'It is a contract of indemnity only, and nobody can recover in respect of the loss who is not really interested. The policy is but a chose in action, and can not pass merely by the assignment of the ship.'

"But the precise question has been settled by the highest authority.

"In the case of the Columbian Ins. Co. v. Lawrence, 10 Pet. 512, Mr. Justice Story says: 'We know of no principle of law or of equity by which a mortgagee has a right to claim the benefit of a policy underwritten for the mortgagor on the mortgaged property, in case of a loss by fire. It is not attached, or an incident to his mortgage. It is strictly a personal contract for the benefit of the mortgagor; to which the mortgagee has no more title than any other creditor.'

"The same principles were affirmed in the case of Carpenter *vs.* The Providence Washington Ins. Co., 16 Pet, 503. In this case it is said: "Policies of insurance against fire are not deemed in their nature incident to the property insured; but they are mere special agreements with the persons insuring against such loss or damage as they may sustain, and not the loss or damage which any other person having an interest as grantee or mortgagee, or creditor, or otherwise, may sustain by reason of the subsequent destruction thereof by fire.'"

The Court held that McDonald had no right to the insurance money under and by virtue of his mortgage.

In Plympton *vs.* Ins. Co., 43 Vt., 497, a person having acquired title by levy of an execution upon premises insured by the execution debtor, was held not entitled to the proceeds of the policy in case of loss by fire. In that State, as in Connecticut, land is not sold on execution, but appraised by freeholders, and set off by metes and bounds, to satisfy the execution. The execution creditor acquires title *by operation of law*, and by the levy acquires all his debtor's *interest* in the land; but a policy of insurance was held not to be an interest in, or an incident of the land.

So Judge Brown, in Gleasen *vs.* First Nat. Bank of Lapeer, 13 Fed. Rep., 721, says: "I had occasion to apply the same principle to a case where the owner of a vessel, injured by collision, sought to recover from the owners of the vessel in fault, which had been sunk by the collision, the amount of certain policies of insurance underwritten upon her. *The "Phestigo,"* 9 *Cent., Law, J.*, 285; On examining the law in this case I became entirely satisfied that libellant's lien upon the vessel for his damages did not attach to her policies of insurance, for the reason that the policies were written for the benefitof the owners, and not for that of the creditors of the vessel."

4. It is optional with an owner whether he will pay the premium which another party will demand to insure his interest in a ship. He may prefer to stand as his own insurer; another part owner may prefer to pay the premium and be insured. If the ship is sent on a voyage, and is totally lost, in the act which causes loss and damages to others, inside or outside of her, upon the claim of the appellants, while the owner who stood his own insurer would be discharged "by the surrender of his ship to the waves," the part owner who had the foresight or prudence to insure his interest would lose not only his interest in the ship, but also the premium which he had paid as the consideration of the contract, and also the trouble and expense of a protracted litigation, in which if he was unsuccessful he would have to bear the loss, and if successful recover for the benefit of another. Such a rule "would discriminate to the disadvantage of the small capitalist, who must insure with third persons, in favor of the *millionaire*, whose extended means allow him to stand his own underwriter; and who, not receiving the amount of loss from third persons, would not be called on to pay it over to the shipper; or to the disadvantage of the prudent in favor of the reckless."

"What matters it to the shipper, whether the ship was insured by the owner or a third party? What right can he claim in the one case more than in the other?"

Wattson v. Menks, supra 170.

If the rule of liability were to depend upon such contingencies, an arbitrary limit would seem more desirable.

The entire exemption from damage by fire given by Sect. 4,282, also tends to show that insurance was not included in the amount of the owner's liability under Sect. 4,283. A ship may be destroyed by fire with all her cargo, without the design or neglect of her owners, and be insured to her full value, which her owners recover, and yet they are not liable to the owners of the cargo. The steamer "City of New London" was burned in the river Thames in November, 1871, with a large cargo. She was insured against loss by fire, as was the "City of Norwich," yet her owners were not liable to

pay over the insurance money to the shippers. The "City of Norwich" was burned with her cargo. The fire was caused by a negligent collision, and it is claimed that her owners should pay over the insurance. It would seem that if the law makers had intended that insurance should be included they would have done so in both cases.

5. It is urged by counsel in one of the suits involving this question, that the Court should enforce the rule, that "he who asks equity must do equity," and urges that it is inequitable that the ship-owner should retain his insurance received in consequence of the loss of his ship, and the claimant lose all compensation by the loss of the ship.

This reasoning assumes that the Court is administering equitable relief, and may therefore impose terms upon which they may deem it equitable to grant it.

But the limit of liability is a matter of *positive law*. It springs from a rule of policy in relation to the encouragement of navigation and commerce. The duty of the Court is to determine what that limit is, and give the benefit of it without conditions. Judge Woodruff, in Wright *vs.* The Nor. & N. Y. Transportation Co., 8 Blatch., C. C., page 28, says: "If Congress had declared that the respondents should not be liable for losses sustained by collision, except to the amount of their interest in the vessel in fault, and her freight then pending, *no Court, whether of Admiralty, or Law, or Equity*, could properly make a decree, which in terms would subject them to a larger liability, and thereby practically nullify the Statute." * * * "It were better to say, if there is no Court which can give a decree in favor of the claimant, without violating the Statute, then no judgment or decree can be rendered." P. 29.

6. It is further urged, "that considered as a question of commercial or maritime law, this Court will regard itself as free to adopt that rule, which it shall on the whole consider most wise and just, in view of all the principles and interests affected, and in view of all the bearings of the matter." It is respectfully submitted that what it shall deem most wise and just, will be exactly the rule which the Statute prescribes.

It belongs to another department of the government to declare what the law *shall be;* this tribunal will fully meet its responsibility and discharge its duty, when it ascertains and determines what the law *is.* "To declare what the law is, or has been, is a judicial power; to declare what it shall be, is legislative."

Ogden *vs.* Blackledge, 7 Cr., 277.

7. The proper rule of interpretation of the statute is of importance, and justly so regarded by both sides to the controversy.

On behalf of the appellants attention is called to the rigor of the common law, by which ship-owners were held liable for the torts of the master and crew, under the doctrine of *respondeat superior*, and as common carriers were liable for all losses not occasioned "by the act of God or the public enemies," and that the Statute being in derogation of the common law should be strictly construed against the ship-owner, and liberally in favor of the claimant.

On the other hand we claim that the history of the law, and the reason for its enactment, shows that it should be fairly construed for the furtherance of the object in view. The reason was "to encourage persons to become the owners of ships," and to encourage navigation and commerce.

The common law rule in all its severity, unqualified by legislation, became the law of this country.

The case of the "Lexington" was decided in 1848.

The New Jersey S. N. Co. v. The Merchants Bank, 6 How, 344.

And was followed by the Act of 1851.

Between the loss of the "Lexington" by fire in January, 1840, and the passage of the Act, the ship "Henry Clay," a large and costly ship lying at her wharf in New York, having nearly completed her lading, took fire from some cause and was burned with a cargo already laden, amounting to nearly half a million dollars. The owners were held liable. These two disasters, and the alleged hardships of the law led to the passage of the Act.

Previous to this, and as early as 1818 and 1821, the Legislatures of the States of Massachusetts and Maine had enacted similar laws.

Such Acts are regarded as in harmony with, and as carrying out the principles of the laws and ordinances of maritime Europe.

Stinson v. Wyman, Dav., 172, 176.

The whole object of such legislation professedly and necessarily was, by decrease of liability of those upon whom no personal fault could be charged, to promote that commerce which an enlightened policy should seek to foster.

The object of the Act being so clearly exhibited in its history, and it being the liberal offspring of an enlightened policy, liberal construction, were such necessary, should be given it that its object may be attained. That such should be the construction of such a Statute, under time-honored rules, and every rule that can possibly apply is without doubt.

9 Bac. Abr., 251.
Chamberlain v. The W. T. Co., 44 N. Y., 305.

In this case the Court said: "This is not in any sense a penal statute, nor is it in any way derogatory to natural right, and hence I know of no rule of law that requires that it should be strictly construed. It is true that it changes the common law, but there can be no reason for applying the rule of strict construction to the vast body of statute laws which change the common law. The prior law, whether it be statute or common law, is to prevail, unless the subsequent statute, by a fair and proper construction, repeals or modifies it. This statute is rather a remedial statute. It was enacted to remedy the rigor of the common law, which it was deemed unwise, on grounds of public policy, to continue. It should therefore be construed, if not liberally, at least fairly, to carry out the policy which it was enacted to promote."

But we need not look around for authorities as to the principles by which this Act should be viewed and construed. This Court, from the case of the "City of Norwich," 13 Wall, to the case of the Prov., & N. Y. S. S. Co., v. Hill Mfg. Co., 109 U. S. 578, has manifested no hostility to the Act; but on the contrary has construed and applied its provisions in a liberal spirit, and in a manner to promote the great and important benefits which it was intended to

confer upon the shipping interests of the country. The rules adopted by this Court supplemented the provisions of the Statute, and for the first time rendered it really available in cases where it was necessary to bring claimants into concourse.

In the case last referred to, page 588, this Court says: "In those provisions of the Statute we have sketched in outline a scheme of laws and regulations for the benefit of the shipping interest, the value and importance of which to our maritime commerce can hardly be estimated. Nevertheless the practical value of the law will depend on the manner in which it is administered. If the Courts having execution of it administer it in a spirit of fairness, with the view of giving to ship owners the full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations (as before stated) will be of the last importance; but if it is administered with a tight and grudging hand, construing every clause most unfavorably against the ship owner, and allowing as little as possible to operate in his favor, the law will hardly be worth the trouble of its enactment."

8. Reference is made to the debates in Congress when the Act was upon its passage. In relation to such reference for aid in the interpretation of statutes, Taney, C. J., in giving the opinion of this Court, in Aldridge v. Williams, 3 How., 24, says:

"In expounding this law the judgment of the Court can not, in any degree, be influenced by the construction placed upon it by individual members of Congress, in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law, as it passed, is the will of the majority of both Houses; and the only mode in which that will is spoken, is in the Act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

It has been held by this Court, in construction of this Act of 1851, that the debates in Congress could not affect its construction. The proviso at the close of the Act, that it should not apply to vessels employed in "inland navigation," was added for the express purpose of excluding the western lakes from its operation. 23 *Cong. Globe* 713–718. And yet this Court held in Moore v. The Am. Transp. Co., 24 How. 1, that the Act did apply to vessels navigating those lakes.

So Woodruff, J., in his opinion, holding that the Act only limited the liability of ship-owners as common carriers, and did not apply to limit their liability for damages to other ships by collision, relied largely upon the debates in Congress, upon the passage of the Act; but his decision was reversed by this Court, relying upon the provisions of the Act.

See his opinion, 8 Blatch., C. C., 21.

II.

By the general Maritime Law, the ship-owners, (if personally free from blame), were not liable for the negligent or wrongful acts of the master and crew, beyond the amount of their interest in the ship. So that if they surrendered the ship they were discharged.

Norwich Co. v. Wright, supra, 116.
The Scotland, supra, p. 28.

The review of the authorities upon this question, made by Judges Kane, Benedict and Brown, and by Mr. Justice Strong, in the cases which have been cited, leaves little room for discussion; and we refer to the citations and reasons given in those opinions.

In the Norwich Co. v. Wright, supra, this Court, after quoting the language of Pardessus, as follows: "Pardessus says: 'The owner is bound civilly for all delinquencies committed by the captain, within the scope of his authority, but he may discharge himself therefrom by abandoning the ship and freight; and if they are lost, it suffices for his discharge, to surrender all claims in respect of the ship and its freight,'" adds, "such as insurance."

These words thus added are a statement not of the views of the Supreme Court on this point, but of Pardessus. The question was not before the Court for decision, and was not decided.

The words which are taken from him appear to be taken from an early edition of his Droit Commercial. In the edition of 1841, the language quoted is not found. In that edition Pardessus says: "The law authorizes the owner to free himself by surrender of ship and freight, not only from civil responsibility for acts and torts of the captain, but also from all contracts relating to the ship and the expedition." And he adds: "As the owner must surrender the freight, we think that, if he has received it in whole or in part, he must bring in the amount. *We have even brought ourselves to the belief* that, if the ship was insured, the creditors to whom the surrender is made would have the right to demand the amount of the insurance, for the same reason which has led us to say that the acquirer of a thing insured has the right to the amount due from the insurer, in case of loss: in fact the surrender is a transfer of property, or giving in payment."

This language indicates plainly that, however clear may have been the views of Pardessus, when the earlier editions of his book were published, at this time there was a doubt in his mind of their correctness, or at least of their universal acceptance; and as will be seen below, such doubt was well justified.

But whatever be the weight of Pardessus on this question, he stands alone; and against him are numerous and far more weighty authorities.

The language of Boulay Paty, on this subject, referred to by Judge Benedict, is worthy to be quoted:

"The product of the insurance is the price of the premium which the ship-owner has paid to insure the ship. This premium is not bound as a security for debts and obligations contracted by the captain; the law expressly binds the ship and freight to that. The Code of Commerce gives to shippers a lien only on ship and freight, consequently they have none on the insurance. In general the ship is not represented by the insurance, which, after the loss of the ship, becomes a right existing by itself, which gives a direct personal action in favor of the insured.

"All these principles, besides, agree with equity and the well understood interests of commerce. Without this rule, indeed, insurances on the hull of a ship would become illusory for her owner, since he would have no way, even by stipulating for a guaranty against barratry of the master, which it is customary to do, to protect himself against any other loss than that of the premium, which, however, is both the object of insurance and the motive for the payment of the premium."

Boulay Paty, Vol. 1, p. 257.

Boulay Paty sustains his views by the high authority of Valin. Other authorities are to the same effect.

"The surrender of the ship and freight does not extend to the insurance which the owner has put upon the ship. Consequently the borrower on bottomry, who has made a surrender, is not bound to account to the lender for the product of insurance on the ship."

DeVilleneuve et Masseé Dictionaire du Contentieux Commercial. Word, Armateur, §18.

"The owner can free himself by the surrender of the ship and freight, unless the captain has acted as the agent of the owner in commercial operations for owner's account.

"The owner can surrender his part of her, if he is part owner. But he is only bound as far as the ship and freight, and not as to his other property, because the captain can bind him only in relation to the thing of which he has the control; nor as far as the amount of the insurance which he has obtained, because that is the representative of a premium paid personally by him."

Eloy et Guerrand.
Des Capitaines, Maitres et Patrons, p. 720.

"In the discussion raised by the presentation of the proposed Law of 1841, some Courts, especially that of Aix, demanded that the surrender should include, besides the ship and the freight, the amount of the insurance which the owner had procured. This claim, which had already made its appearance before the tribunals, had been formally condemned. Insurance, as had been said by the Court of Rennes, is the price of the premium paid by the insured, and this price can not be bound to guarantee obligations contracted by the captain, to which the law pledges expressly only the ship and the freight (Rennes, May 12, 1822).

"Nevertheless, the proposition was reproduced with force in the Chamber of Peers. Its adoption, it was said, would save lenders and shippers from the consequences of an agreement between the captain and the owner, who had been, by his insurance, relieved of his interest, to borrow or sell cargo in order to repair a worthless vessel.

"But this proposition was not accepted. The opinion of the majority, as appears from the discussion, was that the relations established between the owner of the ship and the lenders or shippers ought to remain entirely independent of the contracts of insurance which each of them could make; that the obligation to surrender the amount of the insurance would only amount to forbidding the owner from insuring his ship, as he was already forbidden to insure his freight; for to deprive him of the benefit of the insurance would be to forbid his insuring; and that such a system would make the new law barren for ship-owners."

Bedarride, Du Commerce Maritime, Vol. 1, p. 359.

It was doubtless this discussion and this result, that led Pardessus in his edition of 1841 (the same year) to use language which conveys clearly the impression that he was expressing only his own opinion.

In addition to the sections of Caumont's Dictionaire du Droit Maritime, referred to in the opinion of the District Court, we refer also to sections 57 and 58.

The 7th section of the same article states the earlier authorities for the general rule, as follows:

"The ordinance of 1681, and the jurisprudence of the Parliament of Aix, while it had authority, decided that the owner never exposed anything but his ship to the chances of navigation; that is to say, his sea property and not that of the land. So taught also *Loccenius* and *Vinnius; Decree of Parl. of Aix*, 18 May, 1761, *Emerigon*, chap. 4, Section 4, § 5; *Consul. de la Mer.* ch. 194 and 239; *Grotius* Lib. 2, ch. 11 and 13; Stypmann, part 4, ch. 15, No. 120; *Kuricke*, Quest. 21, *Pothier*, *Treat. on Obligations*, No. 451 and *Charter parties; Boulay Paty* 1, 270; *Dageville* 2, 111; *Fremery*, p. 189; *Court of Cassation*, 9 March, 1814; at *Rennes*, 16 Jan., 1821; at *La Haye*, 4 Nov., 1824; at *Marseilles*, 20 Sept., 1831.

III.

Prior to 1851, the unlimited liability of the common law was in force in the United States, in all its rigor.

When public policy and the interests of navigation and commerce required a change from the rule of unlimited liability to some rule of limited liability, Congress had full power to adopt such rule as in its wisdom seemed wisest for us as a Nation.

On one hand was the well-known and generally accepted rule of the general Maritime Law.

On the other was the rule of the English Statutory Law.

Congress could adopt either or neither, and establish some rule better adapted to our circumstances.

Upon a careful review of the whole matter, this Court said, (13 Wall., 127,): "We do not hesitate to express our decided conviction, that the rule of the Maritime Law on this subject, so far as relates to torts, was intended to be adopted by the Act of 1851."

In "The Scotland," *supra* p. 29, the Court says: "But while the rule adopted by Congress *is the same as the rule of the general Maritime Law*, its efficacy as a rule depends upon the Statute, and not upon any inherent force of the maritime law * * * Therefore, whilst it is now a part of our maritime law, it is, nevertheless, statute law, and must be interpreted as such."

The question then recurs, whether by the Statute the rule of limitation of liability for torts, by the general Maritime Law, which included the ship and pending freight, and which was discharged by their surrender, and if they were totally lost, the liability was discharged, was the measure of liability under our Statute which provides for such limitation of liability and surrender.

The fact that the rule was adopted which prevailed in the Maritime Law, would furnish persuasive evidence that the rule as understood and practiced at the time furnished a "key to unlock the meaning" of our Statute, if there was any ambiguity in it requiring such unlocking. On the other hand, if the language of the

Statute plainly included a surrender of insurance as well as ship and freight, the Statute must control, and the rule of the Maritime Law would not be adopted in that respect. And upon the construction of the Act itself, upon the words therein used, taken in "their natural, plain, obvious and ordinary signification and import,"—(1 Knet Com., 462) we respectfully submit that the Statute fails to include insurance, whether the Maritime Law did or not, as held by Mr. Justice Blatchford in Thommesen v. Whitwill, *supra*, and Justice Strong in this case, and by the District Judges in the cases cited, and that in view of the Maritime Rule, if it had been intended to include insurance, it would have been mentioned in the statement of the measure of liability, and in the clause for surrender, so that not only ship and freight, but insurance should be surrendered, to "be deemed a sufficient compliance with the provisions of the Act."

FOURTH.

The Commissioner found the value of the steamer "in the situation and condition she was in after the collision and before she was raised," to be $2,500. He arrived at this by taking the testimony as to her value after she had been raised and taken to New York, which was $25,000, and deducting therefrom $22,500—being the sum it actually cost her owners (record, p. 57) though it cost the salvors who raised her a much larger sum of money.

If the value of the wreck in the situation and condition it was in after the collision, as this Court has held, is the limit of the liability, this valuation must be unexceptionable.

In the insurance cases the value of the wreck when raised was found to be $22,500—the sum paid the salvors for the work. It cost them over $40,000 to raise her.

FIFTH.

The appellants excepted to so much of the conclusions of law as is embraced in the words following, viz:

"I think, therefore, the owners are not answerable to any extent for freight wholly lost, though it was pending at the time of the collision, for it had no value immediately after."

The finding was, that "The freight thereon pending amounted to $600, but none of it was earned or received by the ship-owners."

In his opinion the learned Justice said: "It is true, that sum ($2,500) is the value of the vessel alone without any thing added for freight. But no freight was earned. Six hundred dollars was the amount pending at the time of the collision, but it was of no value. Had the owners selected the other mode of discharging their liability, that of surrendering or transferring the vessel and freight to a trustee, the fact that there had been six hundred dollars of freight pending would have been of no importance. The value of the subject transferred would have been only that of the vessel, the

same as that which the District Court fixed for apportionment. The transfer of the freight would have been the transfer of a valueless thing."

17 Blatch., C. C., 232.

In deciding that the Admiralty Rule instead of the English Rule was adopted by the Act, and alluding to the fact "that no freight ever probably accrued, as the cargo was never delivered in New York," this Court clearly indicated that in that event there was nothing to be included for freight in fixing the amount of liability in this case.

SIXTH.

It may be claimed here as it was in the Circuit Court, that there was no power in the Court to make that part of the decree which enjoined the libellants from the further prosecution of their suits against the steamer, and against the stipulators and their sureties, saving however the right of the libellants or plaintiffs in any such action to proceed therein for the collection of any costs to which they may be entitled in such action.

It follows as a matter of course that a proceeding, the result of which is to free the owner of a vessel from liability, must have the effect to free the vessel from any lien for such liability. It would be idle to say that the owner of a vessel might take proceedings to free himself from liability by substituting a sum of money for the vessel, if the vessel still remained liable, or was not by the same proceeding relieved from any proceedings taken against her to enforce a lien for such liability.

The result of these proceedings, taken *nunc pro tunc*, must be to discharge the steamer from all liability, *nunc pro tunc*. It follows as a matter of course that the Court must stop all further proceedings on the part of the various libellants to enforce liens which they claim on the vessel; and it does this of its own inherent power as a Court of Equity. The power given by the rule of the Supreme Court to stay proceedings in suits against the owners is not a restriction of that power, but an extension of it.

We refer, also, to the opinion of Mr. Justice Strong upon this point.

17 Blatch., C. C., 237.

FINALLY.

It seems clear that all the questions of any importance which have been raised on this appeal, are disposed of by the decision of this Court in Norwich Company v. Wright, except the question whether by our Statute, the owner is compelled to bring in the amount of his insurance.

That question, whether tested by the natural, fair and ordinary signification and import of the terms of the Act, or by the rule of the Maritime Law, we respectfully submit, was correctly decided by the Circuit Court, and that the decree should be affirmed, with costs.

J. W. C. LEVERIDGE,
Proctor for Respondents.

JEREMIAH HALSEY,
Advocate.

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1885.

No. 62.

GEORGE PLACE, *ET AL.*, APPELLANTS,

vs.

THE NORWICH AND NEW YORK TRANSPORTATION COMPANY.

Authorities from the French on behalf of Respondents.

J. W. C. LEVERIDGE,
Proctor for Respondents.

JEREMIAH HALSEY,
Advocate.

is more conformable to principle, and that the transfer or subrogation of which Valin speaks is not admissible. The axiom *subrogatum tenet locum subrogati* should be understood as applicable, when the thing has been changed into something else by the owner, who has received the other thing in its place, as in the case when the owner of a ship has sold it, it is certain that the lien is transferred according to undoubted law to the price. But when the thing is perished in the hands of the debtor, certainly all lien is extinct. (L 8 ff *quibus modis pignus vel hypotheca solvitur.*) Is it possible to suppose that an insurance, which is an agreement, foreign to the creditors holding liens, which has been effected between the owners and a third party, can have the effect to bring again into life the lien on the ship?

Cannot it be said, moreover, that it is here as in case of the law *de pigneraticia actione*, where it is held that the creditor who has a mortgage upon the timber has no lien upon the ship, built from that same timber, because the law says the ship is one thing and the material, out of which it has been constructed, is another? *Aliud est materia aliud est navis.* There is incontestably a greater affinity between a ship and the sticks of timber used in its construction, than between that same ship and a sum of money due from the underwriters. We must therefore decide with Emerigon, that in the supposed case the amount of the insurance belongs to the body of the creditors. Our opinion is founded upon that of M. Delincourt, *dans ses Institutes de Droit Commercial*, p. 186, from which we draw these arguments. (Droit Com. Mar. Boulay Paty, vol. 1, p. 135. Edition, 1834.)

It is very true that during the existence of the risk the insurance is accessory to the thing insured, but after the loss of the ship the insurance becomes a right existing by itself, which gives a direct personal right of action in favor of the insured, or the body of his creditors, or the holder of the policy, if there has been an assignment of the insurance to a

plus conforme aux principes, et que la translation ou subrogation dont parle Valin n'est pas admissible. L'axiome *subrogatum tenet locum subrogati* doit s'entendre du cas ou la chose a été transmise à un autre par le propriétaire qui a reçu une autre chose à la place, comme si dans l'espèce le propriétaire du navire l'avait vendue, il est certain que le privilége sur le navire se transférait de plein droit sur le prix. Mais quand la chose est périe, dans la main du débiteur certainement tout privilége est éteint. (L 8 ff *quibus modis pignus vel hypotheca solvitur.*) Est-il possible de supposer qu'une assurance, qui est une convention étrangère aux créanciers privilégiées, qui est passée entre les propriétaires et un tiers eut l'éffet de faire revivre le privilége sur le navire?

Ne peut-on pas dire, d'ailleurs, qu'il en est ici comme dans l'espèce de loi *de pigneraticia actione* qui décide que le créancier qui a une hyphothèque sur des bois n'en a aucune sur le navire construit avec ce même bois, parce que, dit la loi, autre chose est le navire, autre chose est la matière qui a servi à le construire. *Aliud est materia aliud est navis.* Il y a incontestablement plus d'affinité entre un navire et les pièces de bois employées à sa construction qu'entre ce même navire et une somme d'argent due par les assureurs. If faut donc décider avec Émérigon que dans le cas proposé le montant de l'assurance appartient à la masse des créanciers. Notre opinion est fondée sur celle de M. Delincourt dans "Les Institutes de Droit Commmercial," p. 186, d'où nous tirons ces arguments. (Droit Com. Mar. Boulay Paty, vol. 1, p. 135. Edition 1834.)

Il est bien vrai que pendant le cours du risque l'assurance est l'accessoire de la chose assurée, mais après la perte du navire l'assurance devient un droit existant par lui-même, qui produit une action directe, personelle, en faveur de l'assuré ou de la masse de ses créanciers ou du porteur de la police s'il y a eu cession de l'assurance à un tiers avant sa

yet at risk, the insurance, notwithstanding its dependence on the thing insured, is a conditional credit liable to cease, and which belongs neither to the material men nor the mechanics. (Ibid, 136, 7.)

If the articles lost were represented by the sum insured, the insurance ought to be represented by the re-insurance. Nevertheless, it has been seen above (Vol. 1.) that the person originally insured has no power to bring a direct action upon, nor has he a lien upon the re-insurance. Therefore the transfer or subrogation, of which M. Valin speaks, is not admissible. (Traité des Assurance et des contrats à la grosse d'Émérigon par Boulay, Paty, Vol. 2, p. 615, Edit., 1827.)

The first contract exists, as agreed upon, without substitution or change. The re-insurance is absolutely foreign to the person obtaining the original insurance, with whom the re-insurer has contracted no kind of obligation. The risks which the insurer took form between him and the re-insurer, the subject of re-insurance, which is a new contract entirely distinct from the first, which not the less exists in its full force. See, therefore, why the premiums of re-insurance can be more or less than those of insurance. * * * This thing does not at all concern the person originally insured, who is in no respect involved in the new contract. It follows from this principle that the person orginally insured can bring no direct action upon, nor has any lien upon the re-insurance. (Ibid, Vol. 2, p. 252.)

The shipowner who abandons the ship and freight to free himself from liability to the shipper, whose goods have been sold by the captain, is not compelled to include the amount of the insurance. (Le Coq c. Tirevert, Sirey de Villeneuve, etc., Vol. 7, Part 2, p. 11, for the years 1822–24.)

When the captain has been obliged to sell part of the cargo in the course of the voyage to repair the ship, the owner is held personally responsible to the shippers and forwarders for the value of the

l'assurance, malgré sa dépendance de la chose assurée, est une créance conditionable susceptible de cesser et qui n'appartient ni aux fournisseurs ni aux ouvriers. (Ibid, 136, 7.)

Si les effets perdus étaient representés par la somme assurée, l'assurance devrait être représentée par la ré-assurance. Cependant on a vu supra (tome 1) que l'assuré primitif ne peut exercer sur la ré-assurance ni action directe ni privilége. Ainsi la translation ou subrogation dont M. Valin parle n'est pas admissible. (Traité des Assurances et des Contrats à la Grosse d'Émérigon, par Boulay Paty, édition 1827, tome 2, p. 615.)

Le premier contrat subsiste tel qu'il a été conçu, sans novation ni altération. La ré-assurance est absolument étrangère à l'assuré primitif, avec lequel le ré-assureur ne contracte aucune sorte d'obligation. Les risques que l'assureur avait pris forment entre lui et le ré-assureur la matière de la ré-assurance, laquelle est un contrat nouveau totalement distinct du premier, qui n'en subsiste pas moins dans toute sa force. Voilà pourquoi les primes des ré-assurances peuvent être moindres ou plus fortes que celles des assurances. * * * La chose ne concerne en rien l'assuré primitif, lequel n'est point intervenu dans ce nouveau contrat. Il suit de ce principe que l'assuré primitif ne peut exercer ni action directe ni privilége sur la ré-assurance. (Ibid, tome 1, p. 252.)

L'armateur qui abandonne le navire et le fret pour se libérer envers le chargeur dont la marchandise a été vendue par le capitaine, n'est pas tenu d'y comprendre le prix de l'assurance. (Le Coq c. Tirevert. Sirey de Villeneuve & Casette, tome 7, partie 2, page 111, Ans 1822-24.)

Lorsque le capitaine a été obligé de vendre partie de la cargaison dans le cours du voyage pour le radoub du navire, le propriétaire est tenu personellement envers les chargeurs ou expéditeurs du prix

De V., etc., for years 1895-97, part 1, page 641.)

Also, when the captain has been obliged to borrow on bottomry in the course of the voyage, for the repairs of the ship, etc. (S. De V., etc., for the year 1883, part 1, p. 353.)

Also, when the captain has been obliged to borrow on bottomry * * * for repairs, etc. (S. De V., etc., for the year 1834, part 1, page 516.)

There was a case to same effect when the captain had pledged the cargo. (Royal Court at Rouen, S. De V., etc., for the year 1832, part 2, p. 159.)

(The three above cited decisions by the Court of Cassation, which held the owners bound for the contracts of the captain, were discussed by the Legislature, when the law of 1841 was enacted, which put an end to further contention in favor of the rule held in those cases, and extended discharge on abandonment to contracts as well as torts.)

The owner or outfitting owner of a ship may however, withdraw himself, by surrender, from all responsibility for the acts of the captain, even when the ship has entirely perished in the disaster. For the passengers, as for all others interested, the value of the ship itself forms all the guaranty required from the owner, and even if under the circumstances that guaranty is worthless, that is the inevitable result of the nature of the contract, and of the peculiar character of the facts which have occurred. (Ibid, for year 1862, Part 2, p. 243.)

The special lien upon ship and freight which article 274 of the Code of Commerce accords for wages to sailors and crew, disappears necessarily in default of the object upon which it could take effect,

d'en faire le paiement par l'abandon du navire et du fret. (Wulfrand-Puget c. Mercier. Sirey de Villeneuve, vol. 8, Ans 1825-27, part. 1, page 641. Cour de Cassation.)

Ainsi, lorsque le capitaine a été obligé d'emprunter à la grosse dans le cours du voyage pour le radoub du navire, etc. (Chicallat c. Levavasseur. Sirey de Villeneuve, An 1833, part. 1, page 353. Cour de Cassation.

Ainsi, lorsque le capitaine a été obligé d'emprunter à la grosse * * * pour le radoub, etc. (Tourrel c. Fabry. Sirey de Villeneuve, An 1834, part. 1, p. 516. Cour de Cassation.)

Le propriétaire ou armateur d'un navire peut, du reste, se soustraire par délaissement à la responsabilité des faits du capitaine, alors même que le navire aurait entièrement péri dans le sinistre. Pour les passagers comme pour tous les autres intéressés le valeur du navire lui-même forme toute la garantie due par l'armateur, et que si, par les circonstances, cette garantie est sans avantage c'est là un résultat inévitable de la nature du contrat et du caractère spécial des faits intervenus. (Risk All. Effendi c. Compagnie Marseilles, etc., Sirey de Villeneuve, 1862 partie 2, page 243.)

Le privilége special que l'art. 274 C. Comm. accorde aux matelots et gens d'équipage pour les loyers sur le navire et fret, s'évanouit nécessairement à défaut d'objet sur lequel il puisse s'exercer,

ed freight for several intermediate trips, as well as the insurance, in case of the loss of the ship. * * * Conceding that that exceptional situation becomes prejudicial to the sailors * * That the difficulty is quite likely to be aggravated by the new extension of maritime and commercial relations; nevertheless it is not the province of the *courts* to remedy it. (St. de V. for year 1867, Part 2, p. 2, Court Imperial, etc.)

The abandonment of the ship and freight by the owner or outfitting owner can be made at any stage of the cause, so long as he has not renounced. (S. de V. for year 1867, Part 1, p. 357, Court of Cassation.)

Inasmuch as it is in fact established by the judgment contested, 1st. That the sum of 46,803 francs paid by the sureties was to release the ship from seizure and embargo; 2d. That the sureties contracted with the captain alone; 3d. That it was in consequence of the faults of the captain and for him that the sureties bound themselves; 4th. That Merlin, the shipowner, was a complete stranger to the contract—inasmuch as the transaction so described was within the application of article 216; that consequently, in sustaining the abandonment of the ship and freight, consented to by the outfitting owner of the ship, Le Moise, the judgment disputed has neither violated nor wrongly applied the articles invoked by the appeal, the appeal is dismissed. (Poisson *v.* Merlin, S. de V., 1869, Part 1, p. 473, Court of Cassation.)

The shipowner is civilly responsible for the results of a shipwreck caused by the negligence of the captain. Therefore the owner can be adjudged to pay damages and an annuity to the widow and children of a chief engineer of the wrecked ship, lost in the wreck; but in such case the owner can relieve himself from all responsibility by abandoning the ship. (D'Orbigny *et al v.* Guerin, S. de V., etc., for the year 1876, Part 2, page 214, Court of Cassation.)

le fret acquis dans plusieurs navigations intermédiaires, ainsi que le montant de l'assurance, au cas du perte du navire. * * * Considérant que cette situation exceptionelle devient préjudiciable aux matelots. * * * Que cette difficulté peut encore être aggravée par l'extension nouvelle des relations maritimes et commerciales, mais qu'il n'appartient pas aux tribunaux d'y rémédier. (Administrateur de la Marine c. Syndic Union Maritime, Sirey de Villeneuve, 1867, partie 2, page, 2, Cours Impériales, etc.)

L'abandon du navire et du fret par le propriétaire ou armateur peut être faite en tout état de la cause tant que celui-ci n'a pas renoncé. (Sarrat c. Les Messageries, etc., Sirey de Villeneuve, 1867, partie 1, p. 857. Cour Cassation.)

Attendu qu'il est constaté en fait par l'arrêt attaqué : 1o. que la somme de 46,803frs. payée par les cautions, l'était pour dégager le navire d'une saisie et d'un embargo ; 2o. que c'est avec le capitaine seul que les cautions ont été contractées ; 3o. que c'est par suite des fautes du capitaine et pour lui que les cautions se sont obligées ; 4o. que Merlin, propriétaire du navire, est resté complètement étranger au contrat. Attendu que l'opération ainsi définie rentrait dans l'application de l'art. 216, que dès lors, en validant l'abandon du navire et du fret consenti par l'armateur du navire *Le Moïse*, l'arrêt n'a attaqué ni violé ni faussement appliqué les articles invoqués par le pouvoir. Rejetté. (Poisson c. Merlin, Sirey de Villeneuve, 1869, partie 1, p. 473, Cour Cassation.)

L'armateur est civilement responsable des suites d'un naufrage causé par l'imprudence du capitaine. Ainsi, l'armateur peut être condamné à des dommages-intérêts et à une pension envers la veuve et les enfants du maître mécanicien du navire naufragé, mort dans le sinistre ; mais l'armateur, en pareil cas, peut se soustraire à toute responsabilité en abandonnant le navire. (D'Orbigny. etc., c. Guérin, Sirey de Villeneuve, 1876, partie 2, p. 214, Cour Cassation.)

§ 388. Is the owner held to include in the abandonment the amount of the insurance?

The solution of that question interests vitally the ship-owner, for it may be said that on it depends his ruin or his fortune. (Quotes Persil's proposed amendment to § 216), "also the insurance" (quotes from Camille Périer's argument against it in the Chamber of Peers. "If the abandonment of the insurance ought to be the necessary consequence of the abandonment of the ship what more the ship-owner could not lose now because the law has limited his responsibility he would lose upon the ship, for in case of abandonment its value would be irrevocably lost for him without any mitigation since the prudence which should make him insure it would profit other people." (Session of Mar. 20, 1841; Moniteur of Mar. 23, p. 713.) Dalloz, who reported for the committee in the Chamber of Deputies, quotes Lehir; also Caumont.

Pouget, vol. 2, pp. 415–419, edition 1858—Principes de Droit Maritime.

388.—L'armateur est-il tenu de comprendre dans l'abandon le montant de l'assurance?

La solution de cette question intéresse vivement l'armateur car ou peut dire que c'est d'elle que depend sa ruine ou sa fortune. (Quotes Persil's proposed amendment to 216.) Ainsi que l'assurance. (Quotes from Camille Périer's argument against it in the Chamber of Peers.) "Si l'abandon de l'assurance doit être la consequence nécessaire de l'abandon du navire ce que l'armateur ne perdrait plus désormais parce que la loi aurait limité sa responsabilité il le perdrait sur le navire car dans le case d'abandon sa valeur serait irrévocablement perdue pour lui lans aucune atténuation puis que la prévoyance qui la lui aurait fait assurer profiterait a d'autres. (Séance du Mar. 20, 1841; Moniteur du Mar. 23, '41, p. 713.)

Dalloz, reporteur commission chambre des députés (in his speech quotes Lehir and Caumont). Principes de Droit Maritime, par Pouget, Tome 2, pp. 415–419, edition 1858.

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Supreme Court of the United States,

OCTOBER TERM, 1885: No. 62.

GEORGE PLACE, ET AL., AND WILLIAM A. WRIGHT, ET AL., *Appellants,*

vs.

THE NORWICH & NEW YORK TRANSPORTATION COMPANY.

SUPPLEMENTAL BRIEF (IN REPLY) FOR APPELLANTS WILLIAM A. WRIGHT, ET AL.

HUNTLEY AND BOWER,
Proctors.

C. R. INGERSOLL,
Advocate.

Hoggson & Robinson, Law Printers, New Haven.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1885. NO. 62.

GEORGE PLACE, *et al.*, *Appellants*,

vs.

THE NORWICH & NEW YORK TRANSPORTATION COMPANY.

Supplemental Brief (In Reply) for Appellants Wright, et al.

The Brief filed by the appellee narrows the ground of controversy.

I. It admits (p. 10) that the "limitation which the statute gives" is the limitation of the maritime law, and that "by that rule the owner's liability was limited to the value of his interest in the vessel and her freight, viz.:—to that value which the owner would have been compelled, under the general maritime law, to surrender in order to be discharged from liability."

It also admits (p. 12) that the "value" contemplated by the statute is the same value that the creditor would be entitled to receive if the vessel, in specie, had been transferred at the time of such payment of value.

Its contention is, therefore, reduced to this—that, inasmuch as the owner *might have* transferred the steamer, or paid its value, for the benefit of the creditors in April, 1866, when she was lying on the bed of the Sound, it could make such transfer or payment June 12, 1872, *as of April*, 1866, unless it was barred from so doing by *laches*, which this Court, in *Norwich Co.* vs. *Wright*, held was not to be imputed to it.

The fallacy of this contention (as we conceive), lies in the assumption that the maritime law fixes the right of abandonment at the time (in case of collision), "immediately after the disaster," or at any other time than when the abandonment is made.

Now the Brief says, (p. 12):

"The proceeding under the Maritime Law to obtain the benefit of this limitation is simple. It is a surrender of the ship and freight, which may be made at almost any time and in almost any way."

Granted. But why may the surrender be made "at almost any time"? Simply, because the right to abandon (so long as it exists), is a *present* right, and not a right as of any past time. Therefore, although it may be lost, as we have shown, by renunciation or waiver, it can rarely,

if ever, be barred by mere *laches*, in the sense of *neglect* to avail oneself of the right.

And this Court in the *Wright* case said that it was not too late for the appellee to go into the Eastern District of New York for an apportionment, only because the vessel, or its equivalent value, was still in the custody of that Court, waiting for the apportionment. Clearly, so long as the vessel exists, the owner, if he has not made a contrary election, (and this the Court in the *Wright* case did not assume to pass upon), has the right to make the surrender. But the exemption following the surrender cannot arise until the surrender is made.

The appellee misapprehends our contention if it supposes that we are charging it with *laches*. On the contrary we insist that it has only been by an astute vigilance that it has so far succeeded in practically avoiding the Statute and substantially exempting both itself and its steamer from any liability whatever to compensate these appellants for the large damage they have suffered by its wrong doing.

The intimation of the brief (p. 8) that counsel in their defence to the suit of these appellants labored under embarrassment from the want of any rules of practice is entirely too modest in view of the present result of this twenty years' litigation.

That the appellee knew of this Statute when its answer to the appellants' libel was made, and knew that its case

was one to which the Statute applied and specially calling for a transfer of the steamer if the appellee desired to avail itself of the benefit of the Statute, the brief shows. For (p. 2) it states that the answer "alleged that the steamer had on board a large and valuable cargo, belonging to various parties, much larger in value than the amount of the interest of the respondents in said steamer and her pending freight."

But why, with this knowledge, was any offer of transfer or payment of value or anything else indicating any election to avail itself of the Statute, omitted?

Clearly it was not by *laches*. And, as clearly we submit, it was by the careful determination, not to run any risk of peril to their insurance claim, by any action in harmony with the Statute—the whole spirit and equity of which is to require of the owner a surrender of his interests in the maritime venture if he elects to claim the statutory privilege.

At any rate, the appellee then, at the least, determined that it was for *its* interest to postpone to some future time the transfer of its vessel or its value for the benefit of the appellants. And to that time it must, therefore, refer its own rights as well as the rights of its creditors.

The appellee now says, (p 13):

"It must follow that if the petitioners now place the parties interested upon the same footing as they would have been, had such transfer been made at the time of the

disaster, the petitioners must be entitled to the same decree."

It is not for the appellee to say that it can in 1885 or 1875 (when the appraisement was made) or 1872 (when the petition was brought) place the appellants upon the same footing that they would have had if the vessel had been transferred to them or they had had the opportunity to appraise her value, in 1866.

The creditors were entitled to determine for themselves what it was best to do with the vessel if they are to be charged with her possession at that time, or to have her appraised as she then actually was, if they are to be charged with her value, as of that time.

The Brief again says:

"It follows, as a matter of course, that a proceeding, the result of which is to free the owner of a vessel from liability, must have the effect to free the vessel from any lien for such liability."

However this may be ~~That may be; but~~ it certainly does follow, as a matter of course, that a proceeding that does not free the vessel from its liens cannot free the owner from his liability to the extent of those liens.

In other words the law is correctly stated by Mr. Benedict, *Ben. Adm.*, Ed. 1870, § 275.

"For the torts and contracts of the master, as such, the

owners are liable; for whatever is a lien upon the vessel the owners are liable, by virtue of that lien, to the extent of the value of the vessel, and, in many cases, to the whole extent of the demand."

II. In support of its contention that the insurance monies should not be taken into the account in valuation of the owner's interest, the appellee cites freely from authorities to show that no equity attaches upon the proceeds of the policy of insurance in favor of third persons, *unless there is some contract or agreement or trust to that effect;* and, particularly so, when the insurance is effected by a mortgagor or mortgagee.

We submit that these authorities only show that any given case depends upon its own equities in this respect.

That a mortgagor or mortgagee may so insure his interest that no equity will arise in favor of any third person is indisputable. But it is equally indisputable that such insurance may be made under such circumstances that the equity will necessarily arise.

In Connecticut, a statute provides:

"Premiums paid by the mortgagee of any property for insuring his interest therein against loss by fire, shall be deemed to be a part of the mortgage debt, and shall be refunded to him before he can be required to release his title."

Clearly, the law under this statute does not permit a mortgagee, who has received the insurance for a loss by fire of the mortgaged property, to say that his mortgage debt has not been paid *pro tanto*. Nor will he be heard to deny that it was so paid *out of the mortgaged property*.

And the reason, we think, is also clear. Technically, it may be said, it is because the property pays the premium, but back of this, we submit, is the real and substantial reason, that the law regards the contract of insurance as a contract of *indemnity* and not of wager, and, therefore, requires the property to pay the premium. Its purpose, and only purpose, is to make good the loss and replace the pledged property that has been consumed. It is the clear duty of the mortgagee, in the eye of the law, to either repair the damaged property or give the property credit for the sum received on account of its loss. And what ought to be done will be regarded as done.

And so in the case in hand, under this Limited Liability Statute, the question is not whether the creditor could have collected the policies of insurance out of the insurer if they had been transferred to him, but the policies of insurance being collected by the ship owner, will *the law* regard them, for *its* purpose of valuing his interest, as the proceeds of a contract of indemnity or a contract of wager? Will the law allow him to say, and especially after he has in fact repaired his vessel, that he did not